

W A R N I N G

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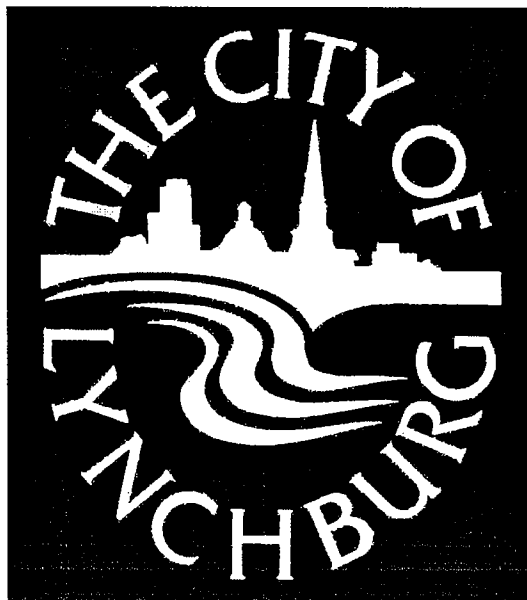
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PROJECT MANUAL
FOR
CITY OF LYNCHBURG
CSO PROJECT 12.2

City Project No. 01088-S



February 12, 2004

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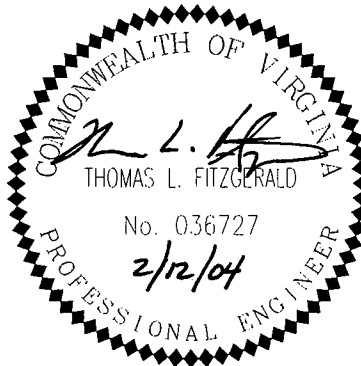
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NOTE: PROJECT MANUAL AND DRAWINGS PREPARED BY WILEY & WILSON, INC.

ADVERTISEMENT

BIDS FOR CSO 12.2 WILL BE RECEIVED BY THE CITY OF LYNCHBURG IN THE PROCUREMENT DIVISION, THIRD FLOOR, CITY HALL, UNTIL 3:00 PM WEDNESDAY, OCTOBER 27, 2004 AND WILL BE PUBLICLY OPENED AND READ ALOUD IN THE BID ROOM, THIRD FLOOR, CITY HALL.

THE WORK SHALL CONSIST OF REPLACEMENT AND REHABILITATION OF APPROXIMATELY 19,600 FEET OF SANITARY SEWER, 7,000 FEET OF STORM SEWER, 4,300 FEET OF WATER MAIN, 10,000 FEET OF CURBS AND GUTTER, AND 5,000 TONS OF PAVEMENT OVERLAY.

BID DOCUMENTS MAY BE OBTAINED FROM WILEY & WILSON, UPON RECEIPT OF A NONREFUNDABLE PAYMENT OF \$75.00 FOR EACH SET. BID DOCUMENTS MAY BE VIEWED AND PRINTED DIRECTLY FROM THE CITY'S WEBSITE AT WWW.LYNCHBURGVA.GOV.

BID DOCUMENTS CONSISTING OF PROJECT MANUAL AND DRAWINGS ARE OPEN TO THE PUBLIC FOR INSPECTION AT THE FOLLOWING LOCATIONS: DEPARTMENT OF PUBLIC WORKS; WILEY & WILSON; DODGE PLAN ROOM, ROANOKE; VALLEY CONSTRUCTION NEWS, ROANOKE; AND THE DEPARTMENT OF MINORITY BUSINESS ENTERPRISES, LYNCHBURG.

A **MANDATORY** PRE-BID CONFERENCE WILL BE HELD AT 10:00 AM, OCTOBER 13, 2004 IN THE PERSONNEL TRAINING ROOM, SECOND FLOOR, CITY HALL, 900 CHURCH STREET, LYNCHBURG, VIRGINIA.

ALL REQUESTS FOR CLARIFICATION OR ADDITIONAL INFORMATION MUST BE MADE IN WRITING TO V. ELOISE BOWLING, CPPB, SENIOR BUYER, PROCUREMENT DIVISION, BY FACSIMILE (434) 845-0711 OR E-MAIL ELOISE.BOWLING@LYNCHBURGVA.GOV AND RECEIVED BY 2:00 PM OCTOBER 20, 2004.

BID SECURITY: BIDS SHALL BE ACCOMPANIED BY A CERTIFIED CHECK OR AN ACCEPTABLE BID BOND IN THE AMOUNT OF 5 PERCENT OF THE BASE BID.

THIS IS A FEDERAL AND STATE FUNDED PROJECT. BIDDERS AND CONTRACTORS PERFORMING WORK UNDER THIS ADVERTISEMENT ARE BOUND BY THE REQUIREMENTS OF THE PRESIDENT'S EXECUTIVE ORDER NOS. 11246, 11375, 11625, AND 12138; CIVIL RIGHTS ACT OF 1964; THE MBE/WBE REQUIREMENTS OF 40 CFR 33.240, AND THE CERTIFICATION OF NON SEGREGATED FACILITIES. BIDDERS MUST ALSO MEET REQUIREMENTS OF THE **SPECIAL CONDITIONS** OF THE PROJECT MANUAL; TITLE 2.2, CHAPTER 43, PARAGRAPH 2.2-4311, EMPLOYMENT DISCRIMINATION PROHIBITIONS, AND PARAGRAPH 2.2-4312, DRUG FREE WORKPLACE.

END OF ADVERTISEMENT

INSTRUCTIONS TO BIDDERS

1. GENERAL: TO BE VALID FOR CONSIDERATION, BIDS MUST BE COMPLETED AND SUBMITTED IN ACCORDANCE WITH THESE INSTRUCTIONS TO BIDDERS. ALL INDIVIDUAL BID UNIT PRICE ITEMS MUST BE FILLED IN REGARDLESS OF THE QUANTITY SHOWN.
2. BIDDING DOCUMENTS WILL BE PROVIDED AS INDICATED IN THE ADVERTISEMENT.
3. QUALIFICATION OF BIDDERS: EACH BIDDER MUST BE PREPARED TO SUBMIT WITHIN 5 CALENDAR DAYS OF THE OWNER'S REQUEST WRITTEN EVIDENCE OF HIS QUALIFICATIONS FOR THE PROJECT INCLUDING FINANCIAL DATA, PREVIOUS EXPERIENCE, AND EVIDENCE OF AUTHORITY TO CONDUCT BUSINESS IN THE JURISDICTION WHERE THE PROJECT IS LOCATED.
4. EXAMINATION OF BID DOCUMENTS AND SITE:
 - 4.01 BEFORE SUBMITTING BIDS, EACH BIDDER MUST EXAMINE BID DOCUMENTS THOROUGHLY; FAMILIARIZE HIMSELF WITH FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, RULES, AND REGULATIONS AFFECTING THE WORK; AND CORRELATE HIS OBSERVATIONS WITH REQUIREMENTS OF THE BID DOCUMENTS.
 - 4.02 BIDDERS ARE REQUESTED AND EXPECTED TO VISIT THE SITE OF THE PROJECT TO ALERT THEMSELVES TO LOCAL AND SPECIAL CONDITIONS WHICH MAY BE ENCOUNTERED DURING CONSTRUCTION OF THE PROJECT SUCH AS: LABOR AND TRANSPORTATION, HANDLING AND STORAGE OF MATERIALS, THE AVAILABILITY OF MATERIALS, AND SITE ACCESS. FAILURE TO MAKE SUCH INVESTIGATIONS SHALL NOT RELIEVE THE SUCCESSFUL BIDDER FROM PERFORMING AND COMPLETING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
 - A. A **MANDATORY PRE-BID CONFERENCE** WILL BE HELD AT THE TIME AND PLACE STATED IN THE ADVERTISEMENT.
5. INTERPRETATIONS:
 - 5.01 NO ORAL INTERPRETATIONS OF THE BID DOCUMENTS WILL BE MADE TO ANY BIDDER. TO BE GIVEN CONSIDERATION, REQUESTS FOR INTERPRETATIONS MUST BE RECEIVED IN TIME TO ALLOW PREPARATION OF WRITTEN RESPONSE AT LEAST 5 DAYS PRIOR TO DATE FIXED FOR OPENING OF BIDS. INTERPRETATIONS WILL BE ISSUED IN THE FORM OF WRITTEN ADDENDA TO THE BID DOCUMENTS AND MAILED TO ALL PARTIES RECORDED BY WILEY & WILSON AS HAVING RECEIVED BID DOCUMENTS, PRIOR TO SCHEDULED OPENING OF BIDS. ONLY INTERPRETATIONS BY FORMAL WRITTEN ADDENDA WILL BE BINDING.
 - 5.02 ALL COMMUNICATIONS IN REGARD TO INTERPRETATIONS AND ANY OTHER MATTERS RELATED TO THIS PROJECT SHALL BE ADDRESSED IN WRITING TO ELOISE BOWLING, PROCUREMENT DIVISION, TELEPHONE 434-455-3963 OR FAX 434-845-0711.
6. SUBSTITUTIONS OF MATERIAL OR EQUIPMENT OR BOTH MAY BE OFFERED IN ACCORDANCE WITH DIVISION 1 - GENERAL REQUIREMENTS.
7. BID SUBMISSION:
 - 7.01 SUBMIT BIDS USING FORMS FURNISHED IN THE PROJECT MANUAL. REPEAT NOTATION "CONTRACTOR'S CURRENT VIRGINIA LICENSE NO. _____" ON OUTSIDE OF INNER ENVELOPE CONTAINING BID AND BID

SECURITY AND PLACE THIS ENVELOPE WITHIN ANOTHER ENVELOPE ADDRESSED TO:

- A. CITY OF LYNCHBURG
PROCUREMENT DIVISION, THIRD FLOOR
900 CHURCH STREET
LYNCHBURG, VA 24504
ATTN: V. ELOISE BOWLING, CPPB, SENIOR BUYER
- 7.02 BOTH THE INNER AND OUTER ENVELOPES SHALL HAVE NOTED THEREON:
 - A. "BID FOR CONSTRUCTION OF CSO PROJECT 12.2."
 - B. THE BIDDER'S NAME AND ADDRESS.
- 7.03 THE CONTRACTOR MUST SUBMIT WITH HIS BID A SIGNED AND NOTARIZED COPY OF THE PRE-BID CONFERENCE ACKNOWLEDGEMENT AND ATTACH A COMPLETED COPY OF AIA DOCUMENT A305 - CONTRACTOR'S QUALIFICATION STATEMENT. THESE DOCUMENTS SHALL BE PUT IN A SEPARATE SEALED ENVELOPE AND PLACED IN THE OUTER ENVELOPE OF THE BID SUBMITTAL ENVELOPE.
- 7.04 BID SECURITY SHALL BE PROVIDED AS STATED IN ADVERTISEMENT.
- 7.05 RECEIPT DEADLINE FOR BIDS WILL BE AS STATED IN THE ADVERTISEMENT.
 - A. NO BIDDER SHALL WITHDRAW, MODIFY, OR CANCEL ANY PART OF HIS BID FOR THE NUMBER OF DAYS STATED ON THE BID FORM FOLLOWING THIS DATE AND TIME EXCEPT AS PROVIDED BY CODE OF VIRGINIA SECTION 2.2-4330(A) PROCEDURE (i).
- 7.06 BIDS WILL BE OPENED PUBLICLY IN ACCORDANCE WITH ADVERTISEMENT.
- 7.07 MODIFICATION AND WITHDRAWAL OF BIDS: BIDS MAY BE MODIFIED OR WITHDRAWN BY AN APPROPRIATE DOCUMENT DULY EXECUTED (IN THE MANNER THAT A BID MUST BE EXECUTED) AND DELIVERED TO THE PLACE WHERE BIDS ARE TO BE SUBMITTED AT ANY TIME PRIOR TO THE OPENING OF BIDS.
- 7.08 WITHDRAWAL OF BIDS AFTER DATE FOR SUBMISSION: IN ACCORDANCE WITH PROCEDURE (i) OF SECTION 2.2-4330(A) OF THE CODE OF VIRGINIA, THE BIDDER WILL HAVE 2 HOURS AFTER THE OPENING OF BIDS WITHIN WHICH TO CLAIM IN WRITING ANY MISTAKE AS DEFINED IN SAID SECTION AND WITHDRAW HIS BID, PROVIDED SUCH MISTAKE BE PROVED FROM THE CONTRACTOR'S WORK PAPERS.
 - A. DEFINITION: CONTRACTOR'S WORK PAPERS ARE THE ORIGINAL WORK PAPERS, DOCUMENTS, AND MATERIALS USED IN THE PREPARATION OF THE BID AS REFERRED TO IN SECTION 2.2-4330(A) OF THE CODE OF VIRGINIA.
- 8. BONDS AND DAMAGES:
 - 8.01 BONDS SHALL BE WITH A SURETY COMPANY ACCEPTABLE TO THE OWNER.
 - 8.02 A PERFORMANCE BOND AND A LABOR AND MATERIAL PAYMENT BOND WILL BE REQUIRED IN THE AMOUNT OF 100 PERCENT OF THE BID.
 - 8.03 LIQUIDATED DAMAGES SHALL BE PAID AS INDICATED IN THE AGREEMENT.
- 9. AWARD OF CONTRACT:
 - 9.01 THE AWARD OF THE CONTRACT WILL BE TO THE RESPONSIBLE BIDDER SUBMITTING THE LOWEST BASE BID WHOSE QUALIFICATIONS INDICATE THE AWARD WILL BE IN THE

BEST INTEREST OF THE OWNER AND WHOSE BID MEETS THE PRESCRIBED REQUIREMENTS.

- 9.02 BEFORE THE CONTRACT IS AWARDED, THE CONTRACTOR SUBMITTING THE LOWEST BID MUST SATISFY THE CITY THAT HE HAS THE REQUISITE ORGANIZATION, CAPITAL, EQUIPMENT, ABILITY, PERSONNEL, AND AT LEAST 5 YEARS EXPERIENCE IN MUNICIPAL TYPE WORK FOR WHICH HE HAS SUBMITTED A BID. EACH BIDDER SHALL, WITH HIS BID, SUBMIT A LIST OF AT LEAST FIVE PROJECTS OF SIMILAR SIZE AND DOLLAR VALUE COMPLETED WITHIN THE LAST 5 YEARS, GIVING LOCATION, DOLLAR VALUE, YEAR COMPLETED, AND THE NAME (S) OF THE OWNER (S) AND ENGINEER (S). THE CONTRACTOR SHALL VERIFY TO THE CITY THAT HE HAS SUFFICIENT AND QUALIFIED PERSONNEL TO PROVIDE FOR THE CONTACT WORK AND HAVE THE ABILITY TO PROVIDE THE NECESSARY MATERIALS AND EQUIPMENT ON AN EMERGENCY BASIS DURING NON-REGULAR HOURS. FAILURE BY THE LOWEST BIDDER TO SUFFICIENTLY SATISFY THE CITY ON HIS ABILITY TO MEET ANY OF THE ABOVE REQUIREMENTS WILL SERVE AS GROUNDS FOR REJECTION OF THE BID.
- 9.03 THE OWNER RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS AND WAIVE ANY AND ALL INFORMALITIES AND THE RIGHT TO DISREGARD ALL NONCONFORMING OR CONDITIONAL BIDS OR COUNTERPROPOSALS.
- 9.04 UNLESS CANCELED OR REJECTED, A RESPONSIVE BID FROM THE LOWEST RESPONSIBLE BIDDER SHALL BE ACCEPTED AS SUBMITTED, EXCEPT THAT IF THE BID FROM THE LOWEST RESPONSIBLE BIDDER EXCEEDS AVAILABLE FUNDS, PURSUANT TO SECTION 18-158 OF THE LYNCHBURG PROCUREMENT ORDINANCE, THE OWNER MAY NEGOTIATE WITH THE APPARENT LOW BIDDER TO OBTAIN A CONTRACT PRICE WITHIN AVAILABLE FUNDS.
- A. PROCEDURES FOR NEGOTIATIONS: IF THE OWNER WISHES TO NEGOTIATE WITH THE APPARENT LOW BIDDER TO OBTAIN A CONTRACT PRICE WITHIN AVAILABLE FUNDS, NEGOTIATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:
- (1) THE USING AGENCY SHALL PROVIDE THE PROCUREMENT ADMINISTRATOR, WITH A WRITTEN DETERMINATION THAT THE APPARENT LOW BID EXCEEDS AVAILABLE FUNDS. SAID DETERMINATION SHALL BE CONFIRMED IN WRITING BY THE DIRECTOR OF FINANCE OR HIS DESIGNEE. THE USING AGENCY SHALL ALSO PROVIDE THE APPROPRIATE DIRECTOR WITH A SUGGESTED REDUCTION IN SCOPE FOR THE PROPOSED PURCHASE.
 - (2) THE PROCUREMENT ADMINISTRATOR SHALL ADVISE THE LOWEST RESPONSIBLE BIDDER, IN WRITING, THAT THE PROPOSED PURCHASE EXCEEDS AVAILABLE FUNDS. HE SHALL FURTHER SUGGEST A REDUCTION IN SCOPE FROM THE PROPOSED PURCHASE, AND INVITE THE LOWEST RESPONSIBLE BIDDER TO AMEND ITS BID PROPOSAL BASED UPON THE PROPOSED REDUCTION IN SCOPE.
 - (3) REPETITIVE INFORMAL DISCUSSIONS WITH THE LOWEST RESPONSIBLE BIDDER FOR PURPOSES OF OBTAINING A CONTRACT WITHIN AVAILABLE FUNDS SHALL BE PERMISSIBLE.
 - (4) THE LOWEST RESPONSIBLE BIDDER SHALL SUBMIT AN ADDENDUM TO ITS BID, WHICH ADDENDUM SHALL INCLUDE: THE CHANGE IN SCOPE FOR THE PROPOSED PURCHASE, THE REDUCTION IN PRICE, AND THE NEW CONTRACT VALUE.
 - (5) IF THE PROPOSED ADDENDUM IS ACCEPTABLE TO THE OWNER, THE OWNER MAY AWARD A CONTRACT WITHIN FUNDS AVAILABLE TO THE LOWEST RESPONSIBLE BIDDER BASED UPON THE AMENDED BID PROPOSAL.

- (6) IF THE OWNER AND THE LOWEST RESPONSIBLE BIDDER CANNOT NEGOTIATE A CONTRACT WITHIN AVAILABLE FUNDS, ALL BIDS SHALL BE REJECTED.

9.05 REQUIREMENTS FOR SOLICITATION AND PARTICIPATION OF MINORITY BUSINESS AND WOMEN-OWNED BUSINESS ENTERPRISES (MBE/WBE); REFER TO 40 CFR 33.240, AND THE FOLLOWING:

A. AFFIRMATIVE STEPS: ACTIVITIES DURING PREPARATION OF BIDS AND OFFERS. BIDDERS/OFFERERS SHALL TAKE AFFIRMATIVE STEPS IN COMPLIANCE WITH THE REGULATIONS, PRIOR TO SUBMISSION OF BIDS OR CLOSING DATE FOR RECEIPT OF INITIAL OFFERS, TO ENCOURAGE PARTICIPATION IN PROJECTS BY MBE'S AND WBE'S. SUCH EFFORTS INCLUDE:

- (1) THE RECRUITMENT AND UTILIZATION OF SMALL, MBE/WBE FIRMS FOR ANY SUBCONTRACT WORK AT ANY TIER, FOR ANY PORTION OF THE WORK INVOLVING ANY CONSTRUCTION OR SERVICES TO BE PERFORMED ON THIS CONTRACT.
- (2) THE CONTRACTOR SHALL ESTABLISH AND MAINTAIN A CURRENT SOLICITATION LIST OF MINORITY AND FEMALE RECRUITMENT SOURCES, AND ASSURE MBE/WBE FIRMS ARE SOLICITED ONCE THEY ARE IDENTIFIED. THIS MAY INCLUDE USING THE SERVICES AND ASSISTANCE OF THE SMALL BUSINESS ADMINISTRATION AND THE OFFICE OF MINORITY BUSINESS ENTERPRISES OF THE U.S. DEPARTMENT OF COMMERCE TO RECRUIT MORE MBE/WBE FIRMS DURING THE PROJECT.
- (3) WHEN FEASIBLE, THE OFFEROR SHALL SEGMENT TOTAL WORK REQUIREMENTS TO PERMIT MAXIMUM MBE/WBE PARTICIPATION AND ESTABLISH DELIVERY SCHEDULES TO ENCOURAGE MBE/WBE PARTICIPATION.
- (4) ASSURING THAT MBE/WBE FIRMS ARE SOLICITED WHENEVER THEY ARE POTENTIAL SOURCES OF GOODS OR SERVICES THROUGHOUT THE TERM OF THE PROJECT. THIS MAY INCLUDE SENDING LETTERS OR MAKING OTHER PERSONAL CONTACT WITH MBE/WBE FIRMS, PRIVATE AGENCIES, AND STATE ASSOCIATIONS (E.G., THOSE WHOSE NAMES APPEAR ON LISTS PREPARED BY EPA OR THE RECIPIENT AND OTHER MBE/WBE KNOWN TO THE BIDDER/OFFEROR). MBE/WBE FIRMS SHOULD BE CONTACTED WHEN OTHER POTENTIAL SUBCONTRACTORS ARE CONTACTED, WITHIN REASONABLE TIME PRIOR TO BID SUBMISSION OR CLOSING DATE FOR RECEIPT OF INITIAL OFFERS.

THOSE LETTERS OR OTHER CONTACTS SHOULD COMMUNICATE THE FOLLOWING:

SPECIFIC DESCRIPTION OF THE WORK TO BE CONTRACTED;

HOW AND WHERE TO OBTAIN A COPY OF PLANS AND SPECIFICATIONS OR OTHER DETAILED INFORMATION NEEDED TO PREPARE A DETAILED PRICE QUOTATION;

DATE THE QUOTATION IS DUE TO THE BIDDER/OFFEROR;

NAME, ADDRESS, AND PHONE NUMBER OF THE PERSON IN THE BIDDER/OFFEROR FIRM WHOM THE PROSPECTIVE MBE/WBE SUBCONTRACTOR SHOULD CONTACT FOR ADDITIONAL INFORMATION.

- B. BIDDERS/OFFERERS MUST DEMONSTRATE COMPLIANCE WITH MBE/WBE REQUIREMENTS TO BE DEEMED RESPONSIBLE. FOR THIS PROJECT THE MBE GOAL IS 5.6 PERCENT AND THE WBE GOAL IS 4.6 PERCENT. DEMONSTRATION OF COMPLIANCE MAY INCLUDE THE FOLLOWING INFORMATION; HOWEVER, THE RECIPIENT MAY SPECIFY OTHER METHODS OF DEMONSTRATING COMPLIANCE.
- (1) NAMES, ADDRESSES, AND PHONE NUMBERS OF ALL MBE/WBE FIRMS CONTACTED AND THOSE SELECTED TO PERFORM WORK.
 - (2) SPECIFIC WORK TASKS TO BE PERFORMED BY THE MBE/WBE FIRMS.
 - (3) THE TOTAL DOLLAR AMOUNT OF WORK TO BE PERFORMED BY MBE/WBE FIRMS, SHOWING TOTAL TO MBE FIRMS AND TOTAL TO WBE FIRMS SEPARATELY.
 - (4) DESCRIPTION OF CONTACTS TO MBE/WBE ORGANIZATIONS, AGENCIES AND ASSOCIATIONS WHICH SERVICE MBE/WBE FIRMS, INCLUDING NAMES OF ORGANIZATIONS, AGENCIES, ASSOCIATIONS, AND DATES OF CONTACTS.
 - (5) DESCRIPTION OF DIRECT CONTACTS TO MBE/WBE FIRMS, INCLUDING NUMBER OF CONTACTS, TYPE OF SERVICE OR WORK SOLICITED (I.E., EQUIPMENT OR MATERIAL SUPPLIER, SITE WORK SUPPORT, TRANSPORT SERVICES, ELECTRICAL SUBCONTRACTORS, PLUMBERS, ADMINISTRATIVE ASSISTANCE, ETC.), WITH THE DATES OF EACH CONTACT.
- C. SUCCESSFUL BIDDERS/OFFERERS SHALL TAKE REASONABLE AFFIRMATIVE STEPS TO SUBCONTRACT WITH MBE'S AND WBE'S WHENEVER ADDITIONAL SUBCONTRACTING OPPORTUNITIES ARISE DURING THE PERFORMANCE OF THE CONTRACT.
- D. EACH PARTY TO A SUBAGREEMENT SHALL TAKE THE AFFIRMATIVE STEPS 1 THROUGH 5 ABOVE.
- 9.06 QUALIFICATIONS: BIDDERS SHALL COMPLETE THE QUALIFICATIONS REPORT ATTACHED TO THE BID FORM.
- 9.07 EQUAL OPPORTUNITY REPORT STATEMENT: BIDDERS SHALL COMPLETE THE EQUAL OPPORTUNITY REPORT STATEMENT ATTACHED TO THE BID FORM.
- 9.08 CERTIFICATION OF NONDISCRIMINATION AND ANTI-COLLUSION STATEMENT: BIDDERS SHALL COMPLETE THE CERTIFICATION OF NONDISCRIMINATION AND ANTI-COLLUSION STATEMENT ATTACHED TO THE BID FORM. FAILURE TO SIGN AND NOTARIZE THIS STATEMENT MAY RESULT IN REJECTION OF THE BID.
- 9.09 SUBMISSION OF POST-BID INFORMATION SHALL BE IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

END OF INSTRUCTIONS TO BIDDERS

BID FORM

TAMMY S. FARMER/BUYER
PROCUREMENT DIVISION
CITY OF LYNCHBURG
P.O. BOX 60
900 CHURCH STREET
LYNCHBURG, VA 24504

GENTLEMEN:

THE UNDERSIGNED, HAVING VISITED AND EXAMINED THE SITE AND HAVING CAREFULLY STUDIED THE DRAWINGS AND PROJECT MANUAL FOR CSO PROJECT 12.2, HEREBY PROPOSES TO FURNISH ALL PLANT, LABOR, EQUIPMENT, MATERIALS, AND SERVICES AND TO PERFORM ALL OPERATIONS NECESSARY TO EXECUTE AND COMPLETE THE WORK REQUIRED FOR THE PROJECT, IN STRICT ACCORDANCE WITH THE DRAWINGS AND PROJECT MANUAL PREPARED BY WILEY & WILSON, ARCHITECTS • ENGINEERS • PLANNERS, DATED FEBRUARY 12, 2004 TOGETHER WITH ADDENDA NUMBERED _____, ISSUED DURING BIDDING PERIOD AND HEREBY ACKNOWLEDGED, SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT FOR THE SUM OF

_____ DOLLARS (\$ _____) WHICH
IS THE SUM OF ALL THE INDIVIDUAL BID ITEMS SHOWN IN THE ATTACHED BID SCHEDULE AND SHALL BE REFERRED TO HEREINAFTER AS THE BASE BID.

THE BASE BID IS FOUNDED UPON FURNISHING EQUIPMENT AND MATERIALS OF SPECIFIED MANUFACTURERS. SUBSTITUTE EQUIPMENT OR MATERIALS OF OTHER MANUFACTURERS MAY BE OFFERED FOR THE OWNER'S CONSIDERATION IN ACCORDANCE WITH DIVISION 1 - GENERAL REQUIREMENTS.

IT IS UNDERSTOOD AND AGREED THAT THE OWNER, IN PROTECTING HIS BEST INTEREST, RESERVES THE RIGHT TO:

REJECT ANY OR ALL BIDS,

ACCEPT ANY BID AT THE BASE BID PRICE, WHEREUPON THE CONTRACTOR SHALL FURNISH EQUIPMENT AND MATERIALS AS SPECIFIED.

THE BASE BID SHALL INCLUDE THE QUANTITIES ON THE ATTACHED BID SCHEDULE. THE BIDDER DECLARES THAT HE UNDERSTANDS THAT THE QUANTITIES SHOWN IN THE BID SCHEDULE ARE APPROXIMATE ONLY; AND ARE SUBJECT TO EITHER INCREASE OR DECREASE BASED ON THE WORK SHOWN ON THE DRAWINGS AND FOR CHANGES IN THE WORK AS DIRECTED BY THE OWNER AND THAT SHOULD THE QUANTITIES OF ANY OF THE ITEMS OF WORK BE INCREASED, THE UNDERSIGNED PROPOSES TO DO THE ADDITIONAL WORK AT THE UNIT PRICE SET OUT HEREIN, AND SHOULD THE QUANTITIES BE DECREASED, HE ALSO UNDERSTANDS THAT PAYMENT WILL BE MADE ON THE ACTUAL QUANTITIES INSTALLED AT THE UNIT PRICES, AND WILL MAKE NO CLAIM FOR THE ANTICIPATED PROFITS FOR ANY DECREASE IN THE QUANTITIES. ACTUAL QUANTITIES WILL BE DETERMINED UPON COMPLETION OF THE WORK. LUMP SUM BID ITEMS WILL NOT BE ADJUSTED.

WE ARE PROPERLY EQUIPPED TO EXECUTE WORK OF THE CHARACTER AND EXTENT INDICATED BY THE BIDDING DOCUMENTS AND SO COVERED BY THIS BID AND WILL ENTER INTO AGREEMENT FOR THE EXECUTION AND COMPLETION OF THE WORK IN ACCORDANCE WITH THE DRAWINGS, PROJECT MANUAL, AND THIS BID; AND WE FURTHER AGREE THAT IF AWARDED THE CONTRACT, WE WILL COMMENCE THE WORK ON THE DATE STATED IN "NOTICE TO CONTRACTOR TO PROCEED" AND THE WORK BE SUBSTANTIALLY COMPLETE WITHIN 760 CALENDAR DAYS.

ENCLOSED HERewith IS THE FOLLOWING SECURITY, OFFERED AS EVIDENCE THAT THE UNDERSIGNED WILL ENTER INTO AGREEMENT FOR THE EXECUTION AND COMPLETION OF THE WORK IN ACCORDANCE WITH THE DRAWINGS AND PROJECT MANUAL:

CASHIER'S CHECK FOR THE SUM OF _____

NAME OF BANK _____

BIDDER'S BOND IN AMOUNT OF _____

BOND ISSUED BY _____

SELECTION OF SUCCESSFUL BIDDER WILL INCLUDE A CONSIDERATION OF COST AND EVALUATION OF WHETHER THE BIDDER HAS CONSCIENTIOUSLY ATTEMPTED TO USE MBE AND WBE. A REQUIREMENT OF THE CONTRACT AGREEMENT WILL BE THAT A GENUINE CONCERTED EFFORT WILL BE MADE TO UTILIZE MBE AND WBE WHEREVER POSSIBLE. ATTACHED HERewith IS THE COMPLETED EQUAL OPPORTUNITY REPORT STATEMENT.

THE UNDERSIGNED FURTHER AGREES THAT IN CASE OF FAILURE ON HIS PART TO EXECUTE THE SAID AGREEMENT WITHIN THE TEN CONSECUTIVE CALENDAR DAYS AFTER WRITTEN NOTICE BEING GIVEN ON THE AWARD OF THE CONTRACT, THE MONIES PAYABLE BY THE SECURITIES ACCOMPANYING THIS BID SHALL BE PAID TO THE CITY OF LYNCHBURG, VIRGINIA AS LIQUIDATED DAMAGES FOR SUCH FAILURE; OTHERWISE, THE SECURITIES ACCOMPANYING THIS BID SHALL BE RETURNED TO THE UNDERSIGNED.

ATTACHED HERewith IS A CERTIFIED NON-DISCRIMINATION AND ANTI-COLLUSION STATEMENT. FAILURE TO SIGN AND NOTARIZE THIS STATEMENT MAY RESULT IN REJECTION OF THE BID.

ATTACHED HERewith IS A COMPLETED QUALIFICATIONS REPORT WHICH INCLUDES THE INFORMATION REQUESTED FOR THE PAST FIVE (5) YEARS.

THIS BID IS SUBJECT TO ACCEPTANCE WITHIN A PERIOD OF 60 DAYS FROM THIS DATE.

RESPECTFULLY SUBMITTED,

CONTRACTOR

BY _____

ADDRESS

TELEPHONE NUMBER

DATE _____

CONTRACTOR'S CURRENT VIRGINIA
LICENSE NUMBER _____ CODE _____

IF DETERMINED TO BE THE SUCCESSFUL LOW BIDDER(S), THE ABOVE SIGNED ELECTS TO USE THE ESCROW ACCOUNT PROCEDURE, A COPY OF WHICH IS ATTACHED TO THIS BID PROPOSAL PACKAGE.

WRITE "YES" OR "NO" ON
ABOVE LINE.

THE CITY RESERVES THE RIGHT NOT TO WITHHOLD RETAINAGE.

IN THE EVENT THE SUCCESSFUL BIDDER ELECTS TO USE THE ESCROW ACCOUNT PROCEDURE, THE "ESCROW AGREEMENT" FORM SHALL BE EXECUTED AND SUBMITTED TO THE CITY OF LYNCHBURG ENGINEERING DIVISION WITHIN FIFTEEN (15) CALENDAR DAYS AFTER NOTIFICATION. IF THE "ESCROW AGREEMENT" FORM IS NOT SUBMITTED WITHIN THE FIFTEEN-DAY PERIOD, THE CONTRACTOR SHALL FORFEIT HIS RIGHTS TO THE USE OF THE ESCROW ACCOUNT PROCEDURE.

EQUAL OPPORTUNITY REPORT STATEMENT

THE BIDDER SHALL COMPLETE THE FOLLOWING STATEMENT BY CHECKING THE APPROPRIATE BLANK AS FOLLOWS.

THE BIDDER HAS _____ HAS NOT _____ PARTICIPATED IN A PREVIOUS CONTRACT SUBJECT TO THE NON-DISCRIMINATION CLAUSE PRESCRIBED BY EXECUTIVE ORDER 10925, DATED MARCH 6, 1961, OR EXECUTIVE ORDER 11114 DATED JUNE 22, 1963, AND EXECUTIVE ORDER 11246 DATED SEPTEMBER 24, 1965.

IN CONJUNCTION WITH THE CITY OF LYNCHBURG'S POLICY TO UTILIZE MINORITY AND WOMEN OWNED BUSINESSES WHEREVER POSSIBLE, THE BIDDER HAS SOLICITED QUOTATIONS FOR LABOR, MATERIAL, AND/OR SERVICES FROM THE FOLLOWING:

<u>NAME OF FIRM</u>	<u>CONTACT NAME AND PHONE NUMBER</u>	<u>DATE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

OF THOSE LISTED ABOVE, WE INTEND, AT THIS TIME, TO UTILIZE THE FOLLOWING IN THE COMPLETION OF THE WORK REQUIRED BY THIS CONTRACT:

<u>NAME OF FIRM</u>	<u>SERVICE/WORK TO BE PERFORMED</u>	<u>ESTIMATED VALUE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

"THIS FIRM ASSURES THAT IT WILL GIVE ITS BEST EFFORTS TO UTILIZE MBE/WBE BUSINESS ENTERPRISES WHEREVER POSSIBLE THROUGHOUT THE TERM OF THIS CONTRACT."

CERTIFIED BY: _____ (SIGNATURE)
_____ (TYPED/PRINTED NAME & TITLE)
COMPANY NAME: _____ (FIRM NAME)
IRS NUMBER: _____ (FIRM TAXPAYER ID)

FAILURE TO DOCUMENT AND REPORT MBE/WBE FIRM CONTACTS ON THIS FORM MAY BE A BASIS FOR REJECTION OF THE BID AS NONCONFORMING.

CERTIFICATION OF NONDISCRIMINATION AND ANTI-COLLUSION

BY SUBMITTING THEIR BIDS, ALL BIDDERS CERTIFY TO THE CITY OF LYNCHBURG, VA THAT THEY WILL CONFORM TO THE PROVISIONS OF THE FEDERAL CIVIL RIGHTS ACT OF 1964, AS AMENDED, AS WELL AS THE VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT OF 1975, AS AMENDED, WHERE APPLICABLE, THE VIRGINIAN'S WITH DISABILITIES ACT, THE AMERICANS WITH DISABILITIES ACT, SECTION 2.2-4311 OF THE VIRGINIA PUBLIC PROCUREMENT ACT, AND THE LYNCHBURG PROCUREMENT ORDINANCE:

IN EVERY CONTRACT OVER \$10,000, THE PROVISIONS BELOW APPLY:

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:
 - A. THE CONTRACTOR WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE CONTRACTOR. THE CONTRACTOR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
 - B. THE CONTRACTOR, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR, WILL STATE THAT SUCH CONTRACTOR IS AN EQUAL OPPORTUNITY EMPLOYER.
 - C. NOTICES, ADVERTISEMENTS AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
2. THE CONTRACTOR WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

I ALSO HEREBY CERTIFY THAT THIS BID IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH ANOTHER PERSON ENGAGED IN THE SAME LINE OF BUSINESS, OR ANY ACT OF FRAUD PUNISHABLE UNDER THE VIRGINIA COMMONWEALTH FRAUDS ACT.

CERTIFIED BY: _____ (CORPORATE SEAL)

DATE: _____

(SEAL)

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____,

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

QUALIFICATIONS

"THE BIDDER SHALL STATE HERE WHAT PREVIOUS MUNICIPAL TYPE WORK HE HAS PERFORMED SIMILAR TO THAT CONTEMPLATED IN THIS CONTRACT, AND GIVE REFERENCES THAT WILL AFFORD THE CITY OF LYNCHBURG AN OPPORTUNITY TO JUDGE EXPERIENCE AND SKILL OF PROPOSED CONTRACTOR AND ALL SUBCONTRACTOR(S). THE CONTRACTOR SHALL LIST FIVE (5) PROJECTS OF SIMILAR SIZE AND DOLLAR VALUE COMPLETED WITHIN THE LAST FIVE (5) YEARS. IF PROPOSING TO USE SUBCONTRACTORS OR JOINT PARTNERS TO COMPLETE MORE THAN 20% OF THE WORK BY PARTNERSHIP, JOINT VENTURE, OR SUBCONTRACT MEANS, THEN PROVIDE PROJECT EXPERIENCE INFORMATION AS OUTLINED ABOVE FOR ALL CONTRACTORS, PARTNERS, OR SUBCONTRACTORS."

SUBMITTAL OF THIS INFORMATION ON OTHER STANDARD FORMS CONTAINING ALL THE INFORMATION NOTED BELOW IS ACCEPTABLE.

FAILURE TO PROVIDE SATISFACTORY EVIDENCE OF EXPERIENCE MAY CAUSE THE BID TO BE REJECTED.

LOCATION	DOLLAR VALUE	YEAR COMPLETED	OWNER/ ENGINEER	PHONE NO.	CONTACT PERSON	TYPE OF WORK DONE
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This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



EPA Project Control Number

United States Environmental Protection Agency
Washington, D.C.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49(11-88)

BID SCHEDULE

A. SANITARY SEWER LINE CONSTRUCTION

ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
1.	4-INCH DUCTILE IRON	LF		E	50		
				I			
2.	6-INCH DUCTILE IRON	LF		E	50		
				I			
3.	8-INCH DUCTILE IRON	LF		E	79		
				I			
4.	10-INCH DUCTILE IRON	LF		E	31		
				I			
5.	12-INCH DUCTILE IRON	LF		E	20		
				I			
6.	16-INCH DUCTILE IRON	LF		E	20		
				I			
7.	18-INCH DUCTILE IRON	LF		E	20		
				I			
8.	24-INCH DUCTILE IRON	LF		E	649		
				I			
9.	DUCTILE IRON FITTINGS	LB		E	100		
				I			
10.	8-INCH PVC SEWER	LF		E	7800		
				I			
11.	10-INCH PVC SEWER	LF		E	55		
				I			
12.	12-INCH PVC SEWER	LF		E	1140		
				I			
13.	15-INCH PVC SEWER	LF		E	1425		
				I			
14.	18-INCH PVC SEWER	LF		E	1408		
				I			
15.	24-INCH PVC SEWER	LF		E	180		
				I			
16.	SANITARY SEWER SERVICE LATERAL, 4-INCH PVC	LF		E	1904		
				I			
17.	SANITARY SEWER SERVICE LATERAL, 6-INCH PVC	LF		E	2176		
				I			
18.	SANITARY SEWER SERVICE RISER PIPE, 4-INCH PVC	VF		E	766		
				I			
19.	SANITARY SEWER SERVICE RISER PIPE, 6-INCH PVC	VF		E	866		
				I			
20.	4-INCH CLEANOUT ASSEMBLY	EA		E	109		
				I			
21.	6-INCH CLEANOUT ASSEMBLY	EA		E	125		
				I			
22.	SANITARY SEWER LAMPSTACK ASSEMBLY	EA		E	2		
				I			
23.	SANITARY SEWER MANHOLE CORE (4-8 INCHES)	EA		E	2		
				I			
24.	SANITARY SEWER MANHOLE CORE (10-16 INCHES)	EA		E	2		
				I			

Note: Fill in unit price for each item regardless of quantity (including zero quantities) and extend out in appropriate total column.
E = eligible payment through VRLF loan and I = ineligible through VRLF loan (City funded).

ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
25.	SANITARY SEWER MANHOLES 48-INCH DIAMETER	VF		E	561		
				I			
26.	SANITARY SEWER MANHOLES 60-INCH DIAMETER	VF		E	4		
				I			
27.	SANITARY SEWER MANHOLE DROP CONNECTION (4-8 INCHES)	VF		E	23		
				I			
28.	SANITARY SEWER MANHOLE DROP CONNECTION (10-24 INCHES)	VF		E	18		
				I			
29.	SANITARY SEWER MANHOLE FRAME AND COVER	EA		E	71		
				I			
30.	WATERPROOF MANHOLE FRAME AND COVER	EA		E	6		
				I			
31.	POINT REPAIR TO EXISTING SANITARY SEWER	EA		E	2		
				I			
32.	REHAB OF MANHOLE WITH WATERPROOF COATING	VF		E	60		
				I			
33.	REHAB OF EXISTING SEWER USING 8-INCH FLEXIBLE LINER	LF		E	747		
				I			
34.	REHAB OF EXISTING SEWER USING 10-INCH FLEXIBLE LINER	LF		E	100		
				I			
35.	REHAB OF EXISTING SEWER USING 12-INCH FLEXIBLE LINER	LF		E	1143		
				I	480		
36.	REHAB OF EXISTING SEWER USING 15-INCH FLEXIBLE LINER	LF		E	600		
				I			
37.	REHAB OF EXISTING SEWER USING 18-INCH FLEXIBLE LINER	LF		E			
				I	320		
38.	REHAB OF EXISTING SEWER USING 24-INCH FLEXIBLE LINER	LF		E	730		
				I			
39.	RECONNECTION OF 4 AND 6" LATERALS ON LINED SECTIONS	EA		E	36		
				I			
SUBTOTAL ELIGIBLE COSTS							
SUBTOTAL INELIGIBLE COSTS							

SUBTOTAL SECTION A

Note: Fill in unit price for each item regardless of quantity (including zero quantities) and extend out in appropriate total column.
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BID SCHEDULE

B. STORM DRAINAGE CONSTRUCTION

ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
1.	12-INCH CLASS III RCP	LF		E	425		
				I	211		
2.	15-INCH CLASS III RCP	LF		E	2400		
				I	231		
3.	18-INCH CLASS III RCP	LF		E	915		
				I	1050		
4.	24-INCH CLASS III RCP	LF		E	1534		
				I			
5.	84-INCH CLASS III RCP W/ "O-RING" JOINTS	LF		E	193		
				I	56		
6.	12" DUCTILE IRON	LF		E	100		
				I	120		
7.	DUCTILE IRON FITTINGS FOR STORM DRAIN INSTALLATION	LF		E	50		
				I	50		
8.	84" x 84" x 48" MH "O-RING" TEE (W/ 48 INCH RISER)	EA		E	2		
				I	1		
9.	STORM SEWER MANHOLE 48-INCH DIAMETER	VF		E	98		
				I	35		
10.	STORM SEWER MANHOLE 60-INCH DIAMETER	VF		E	23		
				I	3		
11.	STORM SEWER MANHOLE 72-INCH DIAMETER	VF		E	4		
				I	4		
12.	STORM SEWER MANHOLE 96-INCH DIAMETER	VF		E	11		
				I			
13.	DROP INLET DI-1 "H" = 2 FEET (COMPLETE)	EA		E			
				I	1		
14.	EXTRA DEPTH FOR DI-1 FOR "H" GREATER THAN 2 FEET	VF		E			
				I	4		
15.	DROP INLET TOP DI-2B "L" = 4 FEET, "H" = 2 FEET	EA		E	7		
				I	5		
16.	EXTRA DEPTH FOR DI-2B FOR "H" GREATER THAN 2 FEET	VF		E	22		
				I	22		
17.	EXTRA LENGTH FOR DI-2B FOR "L" > THAN 4 FEET	LF		E	38		
				I	10		
18.	DROP INLET TOP DI-2C "L" = 6 FEET, "H" = 2 FEET	EA		E	1		
				I			
19.	EXTRA DEPTH FOR DI-2C FOR "H" GREATER THAN 2 FEET	VF		E	3		
				I			
20.	EXTRA LENGTH FOR DI-2C FOR "L" > THAN 6 FEET	LF		E	2		
				I			
21.	DROP INLET TOP DI-3B "L" = 4 FEET, "H" = 2 FEET	EA		E	18		
				I	16		
22.	EXTRA DEPTH FOR DI-3B, FOR "H" GREATER THAN 2 FEET	VF		E	67		
				I	62		
23.	EXTRA LENGTH FOR DI-3B FOR "L" > THAN 6 FEET	LF		E	94		
				I	68		
24.	DROP INLET TOP DI-3C, "L" = 6 FEET, "H" = 2 FEET	EA		E	5		
				I	1		

Note: Fill in unit price for each item regardless of quantity (including zero quantities) and extend out in appropriate total column.
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ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
25.	EXTRA DEPTH FOR DI-3C, FOR "H" GREATER THAN 2 FEET	VF		E	47		
				I	20		
26.	EXTRA LENGTH FOR DI-3C FOR "L" > THAN 6 FEET	LF		E	34		
				I	8		
27.	DROP INLET DI-5 OR DI-7 "H" = 2 FEET (COMPLETE)	EA		E	1		
				I	1		
28.	EXTRA DEPTH FOR DI-5 OR DI-7, FOR "H" GREATER THAN 2 FEET	VF		E	4		
				I	4		
29.	ES-1 FLARED END SECTION FOR 12-INCH PIPE	EA		E			
				I	1		
30.	ES-1 FLARED END SECTION FOR 15-INCH PIPE	EA		E			
				I	1		
31.	ES-1 FLARED END SECTION FOR 18-INCH PIPE	EA		E	1		
				I	1		
32.	ES-1 FLARED END SECTION FOR 24-INCH PIPE	EA		E			
				I	1		
33.	ES-1 FLARED END SECTION FOR 30-INCH PIPE	EA		E			
				I	1		
34.	ES-1 FLARED END SECTION FOR 36-INCH PIPE	EA		E			
				I	1		
35.	EW-1 ENDWALL FOR 15-INCH PIPE	EA		E	1		
				I	1		
36.	EW-1 ENDWALL FOR 18-INCH PIPE	EA		E			
				I	1		
37.	EW-1 ENDWALL FOR 24-INCH PIPE	EA		E			
				I	2		
38.	EW-2 ENDWALL FOR 84-INCH PIPE	EA		E	2		
				I			
39.	EW-11APC, 18-INCH ENDWALL WITH LOAD CARRYING GRATE	EA		E			
				I	1		
40.	STORM MANHOLE FRAME AND COVER	EA		E	26		
				I	6		
41.	REMOVE AND RE-INSTALL DROP INLET TOP	EA		E			
				I	2		
SUBTOTAL ELIGIBLE COSTS							
SUBTOTAL INELIGIBLE COSTS							

SUBTOTAL SECTION B

Note: Fill in unit price for each item regardless of quantity (including zero quantities) and extend out in appropriate total column.
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BID SCHEDULE
C. WATER LINE CONSTRUCTION

ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
1.	2-INCH TYPE K COPPER LINE	LF		E			
				I	150		
2.	6-INCH DUCTILE IRON, CLASS 350	LF		E			
				I	50		
3.	8-INCH DUCTILE IRON, CLASS 350	LF		E			
				I	1380		
4.	12-INCH DUCTILE IRON, CLASS 350	LF		E			
				I	1750		
5.	FITTINGS AND JOINT RESTRAINTS	LBS		E			
				I	2080		
6.	6-INCH VALVES AND BOXES	EA		E			
				I	1		
7.	8-INCH VALVES AND BOXES	EA		E			
				I	3		
8.	12-INCH VALVES AND BOXES	EA		E			
				I	2		
9.	6-INCH WET TAP	EA		E			
				I	3		
10.	8-INCH WET TAP	EA		E			
				I	1		
11.	2-INCH CORPORATION STOP	EA		E			
				I	10		
12.	2-INCH COUPLING	EA		E			
				I	4		
13.	COMBINATION 1-INCH AIR RELEASE VALVE ASSEMBLY	EA		E			
				I	1		
14.	3/4-INCH OR 1-INCH WATER SERVICE (CITY R/W)	LF		E			
				I	945		
15.	3/4-INCH OR 1-INCH WATER SERVICE (PRIVATE PROPERTY)	LF		E			
				I	185		
16.	METER BOX REPLACEMENT (W-9 OR W-10)	EA		E			
				I	42		
17.	FIRE HYDRANT	EA		E			
				I	1		
18.	FIRE HYDRANT ASSEMBLY (W-2 OR W-3)	EA		E			
				I	3		
SUBTOTAL ELIGIBLE COSTS							
SUBTOTAL INELIGIBLE COSTS							

SUBTOTAL SECTION C

Note: Fill in unit price for each item regardless of quantity (including zero quantities) and extend out in appropriate total column.
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BID SCHEDULE

D. MISCELLANEOUS ITEMS APPLICABLE TO CONSTRUCTION

ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
1.	ROCK EXCAVATION BY BLASTING	CY		E	3108		
				I			
2.	ROCK EXCAVATION BY "HOE-RAMMING"	CY		E	4286		
				I	156		
3.	COMMON EXCAVATION	CY		E	361		
				I	106		
4.	EXTRA DEPTH EXCAVATION EXCAVATION (8 TO 16 FEET)	CY		E	5370		
				I	59		
5.	EXTRA DEPTH EXCAVATION (GREATER THAN 16 FEET)	CY		E	525		
				I			
6.	ABANDONMENT OF MANHOLE & DROP INLET STRUCTURES	EA		E	31		
				I	7		
7.	SELECT BORROW	CY		E	1370		
				I	70		
8.	UNFORMED CONCRETE	CY		E	24		
				I	20		
9.	FORMED IN PLACE CONCRETE	CY		E	10		
				I	10		
10.	CONCRETE FOR SIDEWALK REPAIRS, 4 INCHES THICK	SY		E	32		
				I	365		
11.	CONCRETE ENTRANCE REMOVAL & REPLACEMENT	SY		E			
				I	290		
12.	REINFORCING STEEL & RODS FOR CONCRETE WORK	LBS		E	100		
				I	100		
13.	WIRE MESH (6 X 6, 10 GAGE)	SY		E			
				I	185		
14.	REINFORCED CONCRETE PAVEMENT REMOVAL	SY		E	10		
				I	10		
15.	CURB AND GUTTER REMOVAL	LF		E	820		
				I	570		
16.	TREE REMOVAL (6 TO 15 INCHES)	EA		E	5		
				I	5		
17.	TREE REMOVAL (15 INCHES AND LARGER)	EA		E	5		
				I	5		
18.	CLEARING AND GRUBBING LIGHTLY WOODED AREAS	AC		E	3		
				I	1		
19.	CLEARING AND GRUBBING HEAVILY WOODED AREAS	AC		E	1		
				I			
20.	DENSE GRADED AGGREGATE TYPE I - VDOT 21A	TN		E	2270		
				I	1790		
21.	COARSE GRANULAR FILL VDOT # 57 STONE	TN		E	150		
				I	50		
22.	SEEDING & FINE GRADING	SY		E	30295		
				I	10089		
23.	TEMPORARY SEEDING & GRADING	SY		E	30295		
				I	10089		
24.	SILT FENCE BARRIER	LF		E	8209		
				I	610		

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ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
25.	DROP INLET SILT TRAPS	EA		E	33		
				I	22		
26.	DRY RIPRAP CLASS AI, (UNGROUTED)	TN		E	53		
				I	38		
27.	DRY RIPRAP CLASS I, (UNGROUTED)	TN		E	165		
				I	20		
28.	DRY RIPRAP, CLASS I, GROUTED IN PLACE	TN		E	230		
				I			
29.	DRY RIPRAP CLASS II, (UNGROUTED)	TN		E	20		
				I	20		
30.	COARSE AGGREGATE (VDOT NO. 1)	TN		E	50		
				I	50		
31.	PROTECTIVE COVERING, EC-2	SY		E	1400		
				I	50		
32.	FERNCO COUPLINGS 4-INCH AND 6-INCH	EA		E	232		
				I			
33.	FERNCO COUPLINGS 8, 10, 12-INCH	EA		E	6		
				I			
34.	FERNCO COUPLINGS 15-INCH AND ABOVE	EA		E	5		
				I			
35.	ASPHALT PATCH COLLECTOR	SY		E	812		
				I	700		
36.	ASPHALT PATCH RESIDENTIAL	SY		E	927		
				I			
37.	HYBRID PATCH	SY		E	2800		
				I	258		
38.	SURFACE TREATMENT	SY		E	7210		
				I	4500		
39.	SEAL COATING (0.15 GAL/SYD)	SY		E	4410		
				I	4340		
40.	STREET WIDENING OF COLLECTOR STREET	SY		E			
				I	210		
41.	STREET WIDENING OF RESIDENTIAL STREET	SY		E			
				I	273		
42.	REBUILD COLLECTOR STREET	SY		E	400		
				I	2390		
43.	REBUILD RESIDENTIAL STREET	SY		E	3980		
				I	1950		
44.	COMBINED CURB AND GUTTER ALL STYLES	LF		E	1560		
				I	8770		
45.	6 IN. THICK CONC. DRIVEWAY (NEW CONSTRUCTION)	SY		E			
				I	395		
46.	4 IN. THICK CONC. SIDEWALK (NEW CONSTRUCTION)	SY		E			
				I	25		
47.	ADA HANDICAP RAMP	SY		E			
				I	110		
48.	6-INCH BY 12-INCH FACEDOWN CURB FOR SIDEWALKS	LF		E			
				I	84		
49.	EXISTING MANHOLE GRADE ADJUSTMENT INCL. IRON RING	EA		E	72		
				I	5		

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ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE		QNTY	E TOTAL	I TOTAL
50.	EXISTING VALVE BOX GRADE ADJUSTMENT INCL. IRON RING	EA		E	27		
				I	17		
51.	MANHOLE GRADE ADJUSTMENT WITH CONCRETE (PER INCH)	IN		E	556		
				I	66		
52.	PAVEMENT PROFILING PER 1-INCH THICKNESS	SY		E	20783		
				I	21139		
53.	PAVEMENT OVERLAY	TN		E	1560		
				I	1590		
54.	PAVEMENT REMOVAL	SY		E	100		
				I	100		
55.	ADDITIONAL 1-INCH OF BM-25 ASPHALT FOR TRENCH PATCH	SY		E	10		
				I	10		
56.	ASPHALT DRIVEWAY REMOVAL	SY		E	10		
				I	10		
57.	CONCRETE DRIVEWAY REMOVAL	SY		E			
				I	7		
58.	CHAIN LINK FENCE RELOCATION	LF		E	800		
				I	50		
59.	WOVEN WIRE FENCE RELOCATION	LF		E	100		
				I	100		
60.	TREATED WOOD FENCE RELOCATION	LF		E	100		
				I	100		
61.	LANDSCAPING RELOCATION	SY		E	50		
				I	50		
62.	REMOVAL OF ROCK OR CONC. RETAINING WALL, < 4 FT HIGH	LF		E	10		
				I	10		
63.	REBUILD ROCK OR CONC. RETAINING WALL, < 4 FT HIGH	LF		E	105		
				I			
64.	PAVING DRIVEWAYS AFTER STREET PAVING COMP.	TN		E	10		
				I	10		
65.	GUARDRAIL (GR-2) GALVANIZED 6" WITH I-BEAM POSTS	LF		E	160		
				I	100		
66.	HANDRAIL, VDOT HR-1	LF		E	125		
				I			
67.	RELOCATION/REPLACEMENT OF SPECIFIC SHRUBS/PLANTS	EA		E	15		
				I	10		
68.	TRAFFIC CONTROL	LS		E	0.8		
				I	0.2		
69.	AS-BUILT SURVEY AND RECORD RECORD DRAWING SUBMITTAL	LS		E	0.8		
				I	0.2		
70.	SOIL COMPACTION TEST 1-POINT PROCTOR (LIBRARY)	EA		E	100		
				I	30		
SUBTOTAL ELIGIBLE COSTS							
SUBTOTAL INELIGIBLE COSTS							
SUBTOTAL SECTION D							
SUBTOTALS SECTIONS A, B, C AND D							
GCI	GENERAL CONDITIONS REQUIREMENTS (5% MAXIMUM)	LS		E	0.8		
				I	0.2		
TOTAL SECTIONS A, B, C, AND D							

TOTAL BID PRICE

**CITY OF LYNCHBURG
ESCROW AGREEMENT**

THIS AGREEMENT, MADE AND ENTERED INTO THIS _____ DAY OF _____,
2004 BY, BETWEEN AND AMONG THE CITY OF LYNCHBURG ("CITY"), _____

(NAME OF BANK)

(ADDRESS OF BANK)

A TRUST COMPANY, BANK, OR SAVINGS AND LOAN INSTITUTION WITH ITS PRINCIPAL OFFICE
LOCATED IN THE COMMONWEALTH OF VIRGINIA (HEREINAFTER REFERRED TO
COLLECTIVELY AS "BANK") AND _____

("SURETY") PROVIDES:

I.

THE CITY AND THE CONTRACTOR HAVE ENTERED INTO A CONTRACT WITH RESPECT TO
CITY PROJECT NO. _____

("THE CONTRACT"). THIS AGREEMENT IS PURSUANT TO, BUT IN NO WAY AMENDS OR
MODIFIES, THE CONTRACT. PAYMENTS MADE HEREUNDER OR THE RELEASE OF FUNDS FROM
ESCROW SHALL NOT BE DEEMED APPROVAL OR ACCEPTANCE OF PERFORMANCE BY THE
CONTRACTOR.

II.

IN ORDER TO ASSURE FULL AND SATISFACTORY PERFORMANCE BY THE CONTRACTOR OF
ITS OBLIGATIONS UNDER THE CONTRACT, THE CITY'S DIRECTOR OF FINANCE IS REQUIRED
THEREBY TO RETAIN CERTAIN AMOUNTS OTHERWISE DUE THE CONTRACTOR. THE CONTRACTOR
HAS, WITH THE APPROVAL OF THE CITY, ELECTED TO HAVE THESE RETAINED AMOUNTS
HELD IN ESCROW BY THE BANK. THIS AGREEMENT SETS FORTH THE TERMS OF THE ESCROW.
THE BANK SHALL NOT BE DEEMED A PARTY TO, BOUND BY, OR REQUIRED TO INQUIRE
INTO THE TERMS OF, THE CONTRACT OR ANY OTHER INSTRUMENT OR AGREEMENT BETWEEN THE
CITY AND THE CONTRACTOR.

III.

THE CITY SHALL FROM TIME TO TIME PURSUANT TO ITS CONTRACT PAY TO THE BANK
AMOUNTS RETAINED BY IT UNDER THE CONTRACT. EXCEPT AS TO AMOUNTS ACTUALLY
WITHDRAWN FROM ESCROW BY THE CITY, THE CONTRACTOR SHALL LOOK SOLELY TO THE BANK
FOR THE PAYMENT OF FUNDS RETAINED UNDER THE CONTRACT AND PAID BY THE CITY TO
THE BANK.

THE RISK OF LOSS BY DIMINUTION OF THE PRINCIPAL OF ANY FUNDS INVESTED UNDER
THE TERMS OF THIS CONTRACT SHALL BE SOLELY UPON THE CONTRACTOR.

FUNDS AND SECURITIES HELD BY THE BANK PURSUANT TO THIS ESCROW AGREEMENT
SHALL NOT BE SUBJECT TO LEVY, GARNISHMENT, ATTACHMENT, LIEN, OR OTHER PROCESS
WHATSOEVER. CONTRACTOR AGREES NOT TO ASSIGN, PLEDGE, DISCOUNT, SELL OR OTHERWISE
TRANSFER OR DISPOSE OF HIS INTEREST IN THE ESCROW ACCOUNT OR ANY PART THEREOF,
EXCEPT TO THE SURETY.

IV.

UPON RECEIPT OF CHECKS OR WARRANTS DRAWN BY THE DIRECTOR OF FINANCE AND MADE PAYABLE TO IT AS ESCROW AGENT, THE BANK SHALL PROMPTLY NOTIFY THE CONTRACTOR, NEGOTIATE THE SAME AND DEPOSIT OR INVEST AND REINVEST THE PROCEEDS IN APPROVED SECURITIES IN ACCORDANCE WITH THE WRITTEN INSTRUCTION OF THE CONTRACTOR. IN NO EVENT SHALL THE BANK INVEST THE ESCROWED FUNDS IN ANY SECURITY NOT APPROVED.

V.

THE FOLLOWING SECURITIES, AND NONE OTHER, ARE APPROVED SECURITIES FOR ALL PURPOSES OF THIS AGREEMENT:

- (1) UNITED STATES TREASURY BONDS, UNITED STATES TREASURY NOTES, UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS OR UNITED STATES TREASURY BILLS,
- (2) BONDS, NOTES AND OTHER EVIDENCES OF INDEBTEDNESS UNCONDITIONALLY GUARANTEED AS TO THE PAYMENT OF PRINCIPAL AND INTEREST BY THE UNITED STATES,
- (3) BONDS OR NOTES OF THE CITY,
- (4) BONDS OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, IF SUCH BONDS CARRIED, AT THE TIME OF PURCHASE BY THE BANK OR DEPOSIT BY THE CONTRACTOR, A STANDARD AND POOR'S OR MOODY'S INVESTORS SERVICE RATING OF AT LEAST "A", AND
- (5) CERTIFICATES OF DEPOSIT ISSUED BY COMMERCIAL BANKS LOCATED WITHIN THE COMMONWEALTH, INCLUDING, BUT NOT LIMITED TO, THOSE INSURED BY THE BANK AND ITS AFFILIATES,
- (6) ANY BONDS, NOTES, OR OTHER EVIDENCES OF INDEBTEDNESS LISTED IN SECTION (1) THROUGH (3) MAY BE PURCHASED PURSUANT TO A REPURCHASE AGREEMENT WITH A BANK, WITHIN OR WITHOUT THE CITY HAVING A COMBINED CAPITAL, SURPLUS AND UNDIVIDED PROFIT OF NOT LESS THAN \$25,000,000, PROVIDED THE OBLIGATION OF THE BANK TO REPURCHASE IS WITHIN THE TIME LIMITATIONS ESTABLISHED FOR INVESTMENTS AS SET FORTH HEREIN. THE REPURCHASE AGREEMENT SHALL BE CONSIDERED A PURCHASE OF SUCH SECURITIES EVEN IF TITLE, AND/OR POSSESSION OF SUCH SECURITIES IS NOT TRANSFERRED TO THE ESCROW AGENT, SO LONG AS THE REPURCHASE OBLIGATION OF THE BANK IS COLLATERIZED BY THE SECURITIES THEMSELVES, AND THE SECURITIES HAVE ON THE DATE OF THE REPURCHASE AGREEMENT A FAIR MARKET VALUE EQUAL TO AT LEAST 100 PERCENT OF THE AMOUNT OF THE REPURCHASE OBLIGATION OF THE BANK, AND THE SECURITIES ARE HELD BY A THIRD PARTY, AND SEGREGATED FROM OTHER SECURITIES OWNED BY THE BANK.

NO SECURITY IS APPROVED HEREUNDER WHICH MATURES MORE THAN FIVE YEARS AFTER THE DATE OF ITS PURCHASE BY THE BANK OR DEPOSIT BY THE CONTRACTOR.

VI.

THE CONTRACTOR MAY FROM TIME TO TIME WITHDRAW THE WHOLE OR ANY PORTION OF THE ESCROWED FUNDS BY DEPOSITING WITH THE BANK APPROVED SECURITIES IN AN AMOUNT EQUAL TO, OR IN EXCESS OF, THE AMOUNT SO WITHDRAWN. ANY SECURITIES SO DEPOSITED OR WITHDRAWN SHALL BE VALUED AT SUCH TIME OF DEPOSIT OR WITHDRAWAL AT THE LOWER OF PAR OR MARKET VALUE, THE LATTER AS DETERMINED BY THE BANK. ANY SECURITIES SO DEPOSITED SHALL THEREUPON BECOME A PART OF THE ESCROWED FUND.

UPON RECEIPT OF A DIRECTION SIGNED BY THE CITY'S DIRECTOR OF PUBLIC WORKS OR CITY ENGINEER, THE DIRECTOR OF FINANCE OR CITY ACCOUNTANT SHALL AUTHORIZE THE BANK TO PAY THE PRINCIPAL OF THE FUND, OR ANY SPECIFIED AMOUNT THEREOF, TO THE ACCOUNT OF THE CITY OF LYNCHBURG. SUCH PAYMENT SHALL BE MADE IN CASH AS SOON AS IS PRACTICABLE AFTER RECEIPT OF THE DIRECTION.

UPON RECEIPT OF A DIRECTION SIGNED BY THE DIRECTOR OF PUBLIC WORKS OR THE CITY ENGINEER, THE DIRECTOR OF FINANCE OR CITY ACCOUNTANT SHALL AUTHORIZE THE BANK TO PAY AND DELIVER THE PRINCIPAL OF THE FUND, OR ANY SPECIFIED AMOUNT THEREOF, TO THE CONTRACTOR, IN CASH OR IN KIND, AS MAY BE SPECIFIED BY THE CONTRACTOR. SUCH PAYMENT AND DELIVERY SHALL BE MADE AS SOON AS IS PRACTICABLE AFTER RECEIPT OF THE DIRECTION.

VII.

FOR ITS SERVICES HEREUNDER THE BANK SHALL BE ENTITLED TO A REASONABLE FEE IN ACCORDANCE WITH ITS PUBLISHED SCHEDULE OF FEES OR AS MAY BE AGREED UPON BY THE BANK AND THE CONTRACTOR. SUCH FEE AND ANY OTHER COSTS OF ADMINISTRATION OF THIS AGREEMENT SHALL BE PAID FROM THE INCOME EARNED UPON THE ESCROWED FUND AND, IF SUCH INCOME IS NOT SUFFICIENT TO PAY THE SAME, BY THE CONTRACTOR.

VIII.

THE NET INCOME EARNED AND RECEIVED UPON THE PRINCIPAL OF THE ESCROWED FUND SHALL BE PAID OVER TO THE CONTRACTOR IN QUARTERLY OR MORE FREQUENT INSTALLMENTS. UNTIL SO PAID OR APPLIED TO PAY THE BANK'S FEE OR ANY OTHER COSTS OF ADMINISTRATION SUCH INCOME SHALL BE DEEMED A PART OF THE PRINCIPAL OF THE FUND.

IX.

THE SURETY UNDERTAKES NO OBLIGATION HEREBY BUT JOINS IN THIS AGREEMENT FOR THE SOLE PURPOSE OF ACKNOWLEDGING THAT ITS OBLIGATIONS AS SURETY FOR THE CONTRACTOR'S PERFORMANCE OF THE CONTRACT ARE NOT AFFECTED HEREBY.

WITNESS THE FOLLOWING SIGNATURES, ALL AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

CITY OF LYNCHBURG

BY: _____
CITY MANAGER

CONTRACTOR

BY: _____
OFFICER, PARTNER OR OWNER (SEAL)

BANK

BY: _____
TITLE: _____

SURETY

BY: _____
ATTORNEY-IN-FACT (SEAL)

CONSTRUCTION AGREEMENT OR CONTRACT

THIS AGREEMENT MADE AND ENTERED INTO ON THE _____ DAY OF _____, 2004, BY AND BETWEEN _____, PARTY OF THE FIRST PART, HEREINAFTER REFERRED TO AS CONTRACTOR, AND THE CITY OF LYNCHBURG, A MUNICIPAL CORPORATION OF THE COMMONWEALTH OF VIRGINIA, PARTY OF THE SECOND PART, HEREINAFTER REFERRED TO AS THE OWNER.

WITNESSETH:

THAT THE CONTRACTOR, FOR THE CONSIDERATION HEREINAFTER FULLY SET OUT, HEREBY AGREES WITH THE OWNER AS FOLLOWS:

1. THAT THE CONTRACTOR SHALL FURNISH ALL LABOR, MATERIALS, TOOLS, AND EQUIPMENT, AND PERFORM ALL WORK IN MANNER AND FORM AS CONTAINED IN THE PROJECT MANUAL AND DRAWINGS, DATED FEBRUARY 12, 2004 FOR CSO PROJECT 12.2 AND ALL OTHER SPECIFICATIONS AS REFERENCED IN THESE DOCUMENTS.

2. THAT THE CONTRACTOR SHALL COMMENCE WORK WITHIN TEN (10) DAYS AFTER AWARD OF THE CONTRACT AND NOTICE TO PROCEED WITH THE WORK UNDER CONTRACT, AND SHALL COMPLETE THE WORK WITHIN 760 CALENDAR DAYS AFTER RECEIPT OF THE NOTICE TO PROCEED FOR THE PROJECT. OWNER AND CONTRACTOR RECOGNIZE THAT TIME IS OF THE ESSENCE OF THIS AGREEMENT AND THAT OWNER WILL SUFFER FINANCIAL LOSS IF THE WORK IS NOT COMPLETED WITHIN THE TIMES SPECIFIED IN THE NOTICE TO PROCEED, PLUS ANY EXTENSIONS THEREOF ALLOWED IN ACCORDANCE WITH ARTICLE 12 OF THE GENERAL CONDITIONS. THEY ALSO RECOGNIZE THE DELAYS, EXPENSE AND DIFFICULTIES INVOLVED IN PROVING THE ACTUAL LOSS SUFFERED BY OWNER IF THE WORK IS NOT COMPLETED ON TIME. ACCORDINGLY, INSTEAD OF REQUIRING ANY SUCH PROOF, OWNER AND CONTRACTOR AGREE THAT AS LIQUIDATED DAMAGES FOR DELAY (BUT NOT AS A PENALTY) CONTRACTOR SHALL PAY OWNER TWO HUNDRED AND SEVENTY FIVE DOLLARS (\$ 275.00) FOR EACH DAY THAT EXPIRES AFTER THE TIME SPECIFIED FOR COMPLETION. IF THE CONTRACTOR IS SUBJECT TO LIQUIDATED DAMAGES, THE OWNER HAS THE RIGHT TO WITHHOLD THE LIQUIDATED DAMAGES FROM THE CONTRACTOR'S REGULAR PAYMENTS OR RETAINAGE.

3. THE OWNER HEREBY AGREES TO PAY THE CONTRACTOR FOR THE FAITHFUL PERFORMANCE OF THIS AGREEMENT SUBJECT TO ADDITIONS AND DEDUCTIONS AS PROVIDED IN THE SPECIFICATIONS OR PROPOSAL, IN LAWFUL MONEY OF THE UNITED STATES, AS FOLLOWS:

THE LUMP SUM OF _____
DOLLARS (\$ _____) .

4. THE OWNER SHALL MAKE PARTIAL PAYMENTS TO THE CONTRACTOR ON THE LAST BUSINESS DAY OF THE MONTH BY CHECK VIA FIRST CLASS MAIL THROUGH THE U. S. POSTAL SERVICE FOR A DULY CERTIFIED AND APPROVED ESTIMATE OF WORK PERFORMED DURING THE PRECEDING CALENDAR MONTH BY THE CONTRACTOR, LESS FIVE PERCENT (5%) OF THE AMOUNT OF SUCH ESTIMATE WHICH IS TO BE RETAINED BY THE OWNER UNTIL ALL WORK HAS BEEN PERFORMED STRICTLY IN ACCORDANCE WITH THIS AGREEMENT AND UNTIL SUCH WORK HAS BEEN ACCEPTED BY THE OWNER.

5. UPON SUBMISSION BY THE CONTRACTOR OF EVIDENCE SATISFACTORY TO THE OWNER THAT ALL PAYROLLS, MATERIAL BILLS AND OTHER COSTS INCURRED BY THE CONTRACTOR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK HAVE BEEN PAID IN FULL, FINAL PAYMENT ON ACCOUNT OF THIS AGREEMENT SHALL BE MADE WITHIN 90 DAYS AFTER THE COMPLETION BY THE CONTRACTOR OF ALL WORK COVERED BY THIS AGREEMENT AND THE ACCEPTANCE OF SUCH WORK BY THE OWNER.

6. IT IS FURTHER MUTUALLY AGREED BETWEEN THE PARTIES HERETO THAT IF, AT ANY TIME AFTER THE EXECUTION OF THIS AGREEMENT AND SURETY BOND HERETO ATTACHED FOR ITS FAITHFUL PERFORMANCE, THE OWNER SHALL DEEM THE SURETY OR SURETIES UPON SUCH BOND TO BE UNSATISFACTORY, OR IF FOR ANY REASON, SUCH BOND CEASES TO BE ADEQUATE TO COVER THE PERFORMANCE OF THE WORK, THE CONTRACTOR SHALL AT ITS EXPENSE, WITHIN FIVE (5) DAYS AFTER THE RECEIPT OF NOTICE FROM THE OWNER SO TO DO, FURNISH AN ADDITIONAL BOND OR BONDS IN SUCH FORM AND AMOUNT, AND SUCH WITH SURETY OR SURETIES AS SHALL BE SATISFACTORY TO THE OWNER. IN SUCH EVENT NO FURTHER PAYMENT TO THE CONTRACTOR SHALL BE DEEMED TO BE DUE UNDER THIS AGREEMENT UNTIL SUCH NEW OR ADDITIONAL SECURITY FOR THE FAITHFUL PERFORMANCE OF THE WORK SHALL BE FURNISHED IN MANNER AND FORM SATISFACTORY TO THE OWNER.

7. CONTRACTOR AGREES TO FULFILL ALL REQUIREMENTS OF STATE, FEDERAL, AND MUNICIPAL LAWS WHICH MAY BE APPLICABLE TO THIS PROJECT.

THIS AGREEMENT IS EXECUTED IN FOUR COUNTERPARTS, EACH OF WHICH SHALL, WITHOUT PROOF OR ACCOUNTING FOR THE OTHER COUNTERPARTS, BE DEEMED AN ORIGINAL CONTRACT.

IN WITNESS WHEREOF, _____ HAS CAUSED ITS NAME TO BE SUBSCRIBED TO THIS AGREEMENT BY _____, ITS _____, AND ITS CORPORATE SEAL TO BE HEREUNTO AFFIXED AND ATTESTED BY _____, ITS _____, SAID OFFICERS BEING DULY AUTHORIZED THEREFORE; AND THE CITY OF LYNCHBURG HAS CAUSED ITS NAME TO BE HEREUNTO SUBSCRIBED BY L. KIMBALL PAYNE, III, ITS CITY MANAGER, AND ITS CORPORATE SEAL TO BE HEREUNTO AFFIXED AND ATTESTED BY PATRICIA W. KOST, ITS CLERK OF COUNCIL, SAID OFFICERS BEING DULY AUTHORIZED THEREFORE, ALL AS TO THE DAY AND YEAR FIRST ABOVE WRITTEN.

(CONTRACTOR)

BY: _____

(SEAL)

ATTEST:

CITY OF LYNCHBURG

(SEAL)

BY: _____
CITY MANAGER

ATTEST:

CLERK OF COUNCIL

APPROVED:

APPROVED:

CITY ENGINEER

CITY ATTORNEY

CSO PROGRAM MANAGER



AIA[®] Document A305[™] – 1986

Contractor's Qualification Statement

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO:

ADDRESS:

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

Corporation ☐

Partnership ☐

Individual ☐

Joint Venture ☐

Other ☐

NAME OF PROJECT (if applicable):

TYPE OF WORK (file separate form for each Classification of Work):

☐ General Construction

☐ HVAC

☐ Plumbing

☐ Electrical

☐ Other (please specify)

§ 1. ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor?

§ 1.2 How many years has your organization been in business under its present business name?

§ 1.2.1 Under what other or former names has your organization operated?

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation:

§ 1.3.2 State of incorporation:

§ 1.3.3 President's name:

§ 1.3.4 Vice-president's name(s)

§ 1.3.5 Secretary's name:

§ 1.3.6 Treasurer's name:

§ 1.4 If your organization is a partnership, answer the following:

§ 1.4.1 Date of organization:

§ 1.4.2 Type of partnership (if applicable):

§ 1.4.3 Name(s) of general partner(s)

§ 1.5 If your organization is individually owned, answer the following:

§ 1.5.1 Date of organization:

§ 1.5.2 Name of owner:

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

§ 2. LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

§ 3. EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.

§ 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

§ 3.4.1 State total worth of work in progress and under contract:

§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

§ 3.5.1 State average annual amount of construction work performed during the past five years:

§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

§ 4. REFERENCES

§ 4.1 Trade References:

§ 4.2 Bank References:

§ 4.3 Surety:

§ 4.3.1 Name of bonding company:

§ 4.3.2 Name and address of agent:

§ 5. FINANCING

§ 5.1 Financial Statement:

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);

Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary).

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

§ 6. SIGNATURE

§ 6.1 Dated at this day of .

Name of Organization:

By:

Title:

§ 6.2

M being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this day of 20

Notary Public:

My Commission Expires:

CONTRACT BOND

KNOW ALL MEN BY THESE PRESENT: THAT WE _____
(HEREINAFTER CALLED THE PRINCIPAL) AND _____
(HEREINAFTER CALLED THE SURETY) ARE HELD AND FIRMLY BOND UNTO THE CITY OF
LYNCHBURG, A MUNICIPAL CORPORATION OF THE COMMONWEALTH OF VIRGINIA (HEREINAFTER
CALLED THE OWNER) IN THE PENAL SUM OF _____

_____ DOLLARS (\$ _____) FOR THE
PAYMENT OF WHICH WE BIND OURSELVES, OUR HEIRS, EXECUTORS, ADMINISTRATORS,
SUCCESSORS, AND ASSIGNS FOR THE FAITHFUL PERFORMANCE OF A CERTAIN WRITTEN
CONTRACT, DATED THE _____ DAY OF _____, 200____, ENTERED INTO BETWEEN THE
PRINCIPAL AND CITY OF LYNCHBURG, FOR _____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT IF THE PRINCIPAL
SHALL FAITHFULLY PERFORM THE TERMS AND CONDITIONS OF THE CONTRACT IN ALL RESPECTS
ON HIS OR ITS PART AND SHALL FULLY PAY ALL OBLIGATIONS INCURRED IN CONNECTION
WITH THE PERFORMANCE OF SUCH CONTRACT ON ACCOUNT OF LABOR AND MATERIALS USED IN
CONNECTION THEREWITH AND ALL SUCH OBLIGATIONS OF EVERY FORM, NATURE, AND
CHARACTER, AND SHALL SAVE HARMLESS THE OWNER FROM ANY AND ALL LIABILITY OF EVERY
NATURE, KIND, AND CHARACTER WHICH MAY BE INCURRED IN CONNECTION WITH THE
PERFORMANCE OF FULFILLMENT OF SUCH CONTRACT ON THE PART OF THE PRINCIPAL OR OTHER
SUCH LIABILITY RESULTING FROM NEGLIGENCE OR OTHERWISE ON THE PART OF THE
PRINCIPAL, AND FURTHER SHALL SAVE HARMLESS THE OWNER FROM ALL COSTS AND DAMAGE
WHICH MAY BE SUFFERED BY REASON OF THE FAILURE OF THE PRINCIPAL TO FULLY AND
COMPLETELY PERFORM SAID CONTRACT, AND SHALL FULLY REIMBURSE AND REPAY THE OWNER
FOR ALL EXPENDITURES OF EVERY KIND, CHARACTER, AND DESCRIPTION WHICH MAY BE
INCURRED BY THE OWNER IN CONNECTION WITH MAKING GOOD ANY AND EVERY DEFAULT WHICH
MAY EXIST ON THE PART OF THE PRINCIPAL IN CONNECTION WITH THE PERFORMANCE OF SAID
CONTRACT; AND FURTHER THAT IF THE PRINCIPAL SHALL PAY ALL LAWFUL CLAIMS OF ALL
PERSONS, FIRMS, PARTNERSHIPS, OR CORPORATIONS FOR LABOR PERFORMED AND MATERIALS
FURNISHED IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT (WE AGREEING THAT
FAILURE SO TO DO SHALL GIVE SUCH PERSONS, FIRMS, PARTNERSHIPS, OR CORPORATIONS A
DIRECT RIGHT OF ACTION AGAINST EITHER THE PRINCIPAL OR SURETY UNDER THIS
OBLIGATION, OR BOTH SAID PRINCIPAL AND SURETY), THEN THIS OBLIGATION SHALL BE
VOID, OTHERWISE THE SAME SHALL REMAIN IN FULL FORCE AND EFFECT; IT BEING
EXPRESSLY UNDERSTOOD AND AGREED THAT THE LIABILITY OF THE SURETY FOR ANY AND ALL
CLAIMS HEREUNDER SHALL IN NO EVENT EXCEED THE PENAL AMOUNT OF THIS OBLIGATION AS
HEREIN STATED;

PROVIDED HOWEVER, THAT THIS BOND IS ISSUED SUBJECT TO THE FOLLOWING CONDITIONS
AND PRIVILEGES:

(1) THAT NO SUIT, ACTION, OR PROCEEDING BY REASON OF ANY DEFAULT WHATEVER ON THE
PART OF THE PRINCIPAL SHALL BE BROUGHT ON THIS BOND AFTER ONE YEAR FROM THE DATE
ON WHICH FINAL PAYMENT ON THE CONTRACT FALLS DUE;

(2) THAT ANY ALTERATIONS OR ADDITIONS WHICH MAY BE MADE UNDER THE CONTRACT OR
THE WORK TO BE DONE UNDER IT OR THE GIVING BY THE OWNER OF ANY EXTENSION OF TIME
FOR THE PERFORMANCE OF THE CONTRACT, OR ANY OTHER FORBEARANCE ON THE PART OF
EITHER THE OWNER OR THE PRINCIPAL SHALL NOT IN ANY WAY RELEASE THE PRINCIPAL AND
SURETY, OR EITHER OF THEM, THEIR HEIRS, EXECUTORS, ADMINISTRATOR, SUCCESSORS OR
ASSIGNS, FROM THEIR LIABILITY HEREUNDER, NOTICE TO THE SURETY OF ANY SUCH
ALTERATIONS, EXTENSIONS, OR FORBEARANCES BEING EXPRESSLY WAIVED.

EXECUTED IN FOUR COUNTERPARTS.

IN WITNESS WHEREOF, _____, THE PRINCIPAL, HAS
CAUSED ITS NAME TO BE HEREUNTO SUBSCRIBED AND ITS CORPORATE SEAL TO BE HEREUNTO
AFFIXED AND DULY ATTESTED BY ITS PROPER OFFICERS HERETOFORE DULY AUTHORIZED THIS
____ DAY OF _____, 200__, AND THE SURETY HAS CAUSED ITS NAME TO BE HEREUNTO
SUBSCRIBED AND ITS SEAL AFFIXED BY ITS AUTHORIZED ATTORNEY-IN-FACT.

BY: _____
PRESIDENT

(SEAL)

ATTEST:

SECRETARY

BY: _____
ATTORNEY-IN-FACT

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

AIA® Document G715™ – 1991

Supplemental Attachment for ACORD Certificate of Insurance 25-S

(This document replaces AIA Document G705, Certificate of Insurance.)

PROJECT (Name and address): _____

INSURED _____

A. General Liability

- | | Yes | No | N/A |
|----------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Does the General Aggregate apply to this Project only? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does this policy include coverage for: | | | |
| a. Premises - Operations? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Explosion, Collapse and Underground Hazards? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Personal Injury Coverage? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Products Coverage? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Completed Operations? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Contractual Coverage for the Insured's obligations in A201? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If coverage is written on a claims-made basis, what is the: | | | |
| a. Retroactive Date? | | | |
| b. Extended Reporting Date? | | | |

B. Worker's Compensation

- | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. If the Insured is exempt from Worker's Compensation statutes, does the Insured carry the equivalent Voluntary Compensation coverage? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|

C. Final Payment Information

- | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Is this certificate being furnished in connection with the Contractor's request for final payment in accordance with the requirements of Sections 9.10.2 and 11.1.3 of AIA Document A201, General Conditions of the Contract for Construction? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. If so, and if the policy period extends beyond termination of the Contract for Construction, is Completed Operations coverage for this Project continued for the balance of the policy period? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

D. Termination Provisions

- | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Has each policy shown on the certificate and this Supplement been endorsed to provide the holder with 30 days notice of cancellation and/or expiration? List below any policies which do not contain this notice. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|

E. Other Provisions

Authorized Representative

Date of Issue

Application and Certificate for Payment

TO OWNER:		PROJECT:		APPLICATION NO:		Distribution to:	
				PERIOD TO:		OWNER <input type="checkbox"/>	
				CONTRACT FOR: General Construction		ARCHITECT <input type="checkbox"/>	
				CONTRACT DATE:		CONTRACTOR <input type="checkbox"/>	
				PROJECT NOS: / /		FIELD <input type="checkbox"/>	
						OTHER <input type="checkbox"/>	

FROM _____ **VIA** _____

CONTRACTOR: _____ **ARCHITECT:** _____

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 0.00
2. Net change by Change Orders \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00

5. RETAINAGE:

- a. 0 % of Completed Work
(Column D + E on G703) \$ 0.00
- b. 0 % of Stored Material
(Column F on G703) \$ 0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00

6. TOTAL EARNED LESS RETAINAGE \$ 0.00
(Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00
(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ 0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 0.00
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$	\$ 0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before
me this _____ day of _____

Notary Public: _____

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 0.00
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)		E THIS PERIOD COMPLETED	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
		\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
	GRAND TOTAL								

DBE USAGE STATUS FORM

SECTION I

CITY PROJECT NO. _____ DATE _____

DESCRIPTION _____

PRIME CONTRACTOR _____

DISADVANTAGED
SUBCONTRACTORS _____ AMOUNT _____

_____ AMOUNT _____

_____ AMOUNT _____

SECTION II

TOTAL PROJECT VALUE	TOTAL THIS APPLICATION	TOTAL TO DATE
_____	_____	_____

TOTAL DISADVANTAGED VALUE	TOTAL THIS APPLICATION	TOTAL TO DATE
_____	_____	_____

SECTION III

% OF DISADVANTAGED WORK = $\frac{\text{TOTAL TO DATE DISADVANTAGED VALUE}}{\text{TOTAL TO DATE PROJECT VALUE}}$ = _____ %

SECTION IV

I HEREBY CERTIFY THAT THE ABOVE FIGURES ARE TRUE AND REFLECTIVE OF THE AMOUNT OF DISADVANTAGED WORK USED ON THIS PROJECT.

(SIGNATURE) (DATE)

DBE FORM 1 - INCLUDE WITH EVERY MONTHLY PAYMENT REQUEST.

AIA[®] Document G706[™] – 1994

Contractor's Affidavit of Payment of Debts and Claims

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input type="checkbox"/>
SURETY	<input type="checkbox"/>
OTHER	<input type="checkbox"/>

PROJECT: *(Name and address)*

ARCHITECT'S PROJECT NUMBER:

TO OWNER: *(Name and address)*

CONTRACT FOR: General Construction
CONTRACT DATED:

STATE OF:
COUNTY OF:

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

EXCEPTIONS:

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA Document G707, Consent of Surety, may be used for this purpose.

Indicate Attachment ☐ Yes ☒ No

CONTRACTOR: *(Name and address)*

BY:

(Signature of authorized representative)

(Printed name and title)

The following supporting documents should be attached hereto if required by the Owner:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
3. Contractor's Affidavit of Release of Liens (AIA Document G706A).

Subscribed and sworn to before me on this date:

Notary Public:
My Commission Expires:

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

[INSERT LOGOS]

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General [seal] Contractors of America

Construction Specifications Institute

[seal]

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision

in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmen-

tal bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other

specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth

day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an

appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their

subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for

permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by

CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or

other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

- a. reviewing and checking all such information and data,

- b. locating all Underground Facilities shown or indicated in the Contract Documents,

- c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is

required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold

harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the

requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 *OWNER's Liability Insurance*

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers,

directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any

of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with

OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Docu-

ments. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjust-

ments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *"Or-Equal" Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with

deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services

will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:*

If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and

ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other

individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the

Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs,

losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify

and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as

otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with

the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific

written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and
2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a

Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall

carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR.

Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages,

and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE;
CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or
2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference,

or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract

Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior

to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in

writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to pro-gress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent

tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or,

because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in

paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that

the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is

substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make

application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. *Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CON-

TRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but

which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and

other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise

such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

SUPPLEMENTARY CONDITIONS

1. SUPPLEMENTS

- 1.01 THESE SUPPLEMENTARY CONDITIONS AMEND OR SUPPLEMENT THE STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT, NSPE DOCUMENT 1910-8, 1996 EDITION, AND OTHER PROVISIONS OF THE CONTRACT DOCUMENTS TO THE EXTENT INDICATED. ALL PROVISIONS WHICH ARE NOT SO AMENDED OR SUPPLEMENTED REMAIN IN FULL FORCE AND EFFECT.

2. DEFINITIONS

- 2.01 THE TERMS USED IN THESE SUPPLEMENTARY CONDITIONS WHICH ARE DEFINED IN THE STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT (NO. 1910-8, 1996 EDITION) HAVE THE MEANINGS ASSIGNED TO THEM IN THE GENERAL CONDITIONS EXCEPT THAT THE "ENGINEER" SHALL BE THE OWNER OR HIS DESIGNATED REPRESENTATIVE.

2.02 ADD TO ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

A. "COMPLETION" AND "SUBSTANTIAL COMPLETION" AS THESE TERMS APPLY TO CONTRACT TIME (ARTICLE 12), COMPLETION (ARTICLE 14), COMPUTATION OF TIME (PARAGRAPH 17.02), AND CONTRACT TIME AND LIQUIDATED DAMAGES (FORM OF AGREEMENT, ARTICLE 3) SHALL BE THE SAME.

B. "ENGINEER" SHALL BE THE OWNER OR HIS DESIGNATED REPRESENTATIVE.

3. COPIES OF DOCUMENTS: MODIFY ARTICLE 2.02 AS FOLLOWS: FOR CONSTRUCTION PURPOSES THE CONTRACTOR WILL BE ISSUED, FREE OF CHARGE, THE FOLLOWING DOCUMENTS:

PROJECT MANUALS - THREE SETS

ORIGINAL SIZE DRAWINGS - THREE SETS OF PRINTS OR ONE SET OF REPRODUCIBLES

IF THE CONTRACTOR REQUIRES ADDITIONAL SETS OF DOCUMENTS DURING THE CONSTRUCTION PERIOD (ABOVE THE NUMBER SPECIFIED ABOVE), HE MAY OBTAIN THEM AT THE COST OF REPRODUCTION.

4. DELETE PARAGRAPH 2.05 C. IN ITS ENTIRETY.

5. REPLACE THE FOLLOWING SENTENCE IN ARTICLE 4, PARAGRAPH 4.01 B.:

"UPON REASONABLE WRITTEN REQUEST, OWNER SHALL ... APPLICABLE LAWS AND REGULATIONS."

WITH THE FOLLOWING SENTENCE:

"RECORD LEGAL TITLE AND LEGAL DESCRIPTION OF THE LANDS UPON WHICH THE WORK IS TO BE PERFORMED MAY BE OBTAINED AT THE CITY OF LYNCHBURG CLERK OF CIRCUIT COURT'S OFFICE AT THE COST OF REPRODUCTION."

6. PRIOR TO BIDDING, CONTRACTOR MAY MAKE SUBSURFACE INVESTIGATIONS IN CITY RIGHT OF WAYS AND IN EASEMENTS ONLY IF COORDINATED THROUGH CITY UTILITIES DIVISION, GREG POFF, (434) 455-4249.

7. BONDS

7.01 ADD THE FOLLOWING TO ARTICLE 5, PARAGRAPH 5.01.

"D. THE CONTRACTOR SHALL SECURE AND PROVIDE ALL BONDS CALLED FOR IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS. ALL BONDS SHALL BE WRITTEN BY SURETIES OR INSURANCE COMPANIES LICENSED TO DO BUSINESS IN THE COMMONWEALTH OF VIRGINIA."

8. DELETE THE SECOND SENTENCE IN PARAGRAPH 5.03 A.

9. INSURANCE: THE CONTRACTOR SHALL PURCHASE AND MAINTAIN THE INSURANCE, COVERED BY ARTICLE 5 OF THE GENERAL CONDITIONS, IN AT LEAST THE FOLLOWING AMOUNTS:

9.01 CONTRACTOR'S COMPREHENSIVE GENERAL LIABILITY (BODILY INJURY AND PROPERTY DAMAGE) SHALL BE PROVIDED FOR THE FOLLOWING MINIMUM LIMITS:

A. BODILY INJURY LIABILITY 1,000,000 DOLLARS SINGLE LIMIT

B. PROPERTY DAMAGE LIABILITY 1,000,000 DOLLARS SINGLE LIMIT

C. THE GENERAL LIABILITY INSURANCE SHALL INCLUDE THE FOLLOWING MINIMUM COVERAGES:

(1) COMPREHENSIVE FORM

(2) PREMISES - OPERATIONS

(3) EXPLOSION AND COLLAPSE HAZARD

(4) UNDERGROUND HAZARDS

(5) PRODUCTS/COMPLETED OPERATIONS HAZARD

(6) CONTRACTUAL LIABILITY INSURANCE

(7) BROAD FORM PROPERTY DAMAGE, INCLUDING COMPLETED OPERATIONS

(8) INDEPENDENT CONTRACTORS (CONTRACTOR'S PROTECTIVE LIABILITY)

(9) PERSONAL INJURY (ALL INSURING AGREEMENTS), DELETING THE EMPLOYEE EXCLUSION.

(10) OWNER'S PROTECTIVE LIABILITY, SEPARATE POLICY IN NAME OF OWNER.

9.02 CONTRACTOR'S AUTOMOBILE LIABILITY (BODILY INJURY AND PROPERTY DAMAGE) SHALL BE PROVIDED FOR THE FOLLOWING MINIMUM LIMITS:

A. BODILY INJURY LIABILITY 500,000 DOLLARS EACH PERSON
1,000,000 DOLLARS EACH OCCURRENCE

B. PROPERTY DAMAGE LIABILITY 200,000 DOLLARS EACH OCCURRENCE

C. THE AUTOMOBILE LIABILITY INSURANCE SHALL INCLUDE THE FOLLOWING COVERAGES:

(1) COMPREHENSIVE FORM

- (2) OWNED
- (3) HIRED
- (4) NONOWNER

- 9.03 EXCESS CATASTROPHE COVERAGE SHALL BE PROVIDED BY THE CONTRACTOR WITH A MINIMUM LIMIT OF 4,000,000 DOLLARS.
- 9.04 CONTRACTOR'S WORKER'S COMPENSATION INSURANCE AS REQUIRED BY FEDERAL, STATE, AND MUNICIPAL LAWS FOR THE PROTECTION OF ALL CONTRACTORS' EMPLOYEES WORKING ON OR IN CONNECTION WITH THE PROJECT, INCLUDING BROAD FORM ALL STATES AND VOLUNTARY COMPENSATION COVERAGE AND EMPLOYERS' LIABILITY COVERAGE.
- 9.05 THE CONTRACTOR SHALL REQUIRE HIS INSURANCE AGENT TO CERTIFY ON THE INSURANCE CERTIFICATE THAT THE INSURANCE COVERAGE SPECIFIED BY THESE SUPPLEMENTARY CONDITIONS IS FULLY IN EFFECT, BOTH IN SCOPE AND AMOUNT. IF INSURANCE COVERAGE IS AFFECTED WITH MORE THAN ONE COMPANY, THE INDIVIDUAL CERTIFICATES SHALL IDENTIFY THE ITEMS OF INSURANCE WHICH THE INDIVIDUAL COMPANIES COVER. THE INSURANCE CERTIFICATE SHALL CONTAIN A PROVISION THAT COVERAGE AFFORDED UNDER THE POLICIES WILL NOT BE CANCELED OR MATERIALLY CHANGED UNLESS AT LEAST 30 DAYS PRIOR WRITTEN NOTICE HAS BEEN GIVEN TO THE OWNER.
- 9.06 UNDER ARTICLE 5, DELETE PARAGRAPHS 5.05 AND 5.06.
- 9.07 THE INSURANCE POLICIES SHALL INCLUDE OR BE ENDORSED TO INCLUDE THE FOLLOWING PROVISIONS:
 - A. ANY DEDUCTIBLES OR SELF-INSURED RETENTION APPLICABLE TO REQUIRED COVERAGE SHALL BE PAID BY THE CONTRACTOR, AND THE OWNER SHALL NOT BE REQUIRED TO PARTICIPATE THEREWITH.
 - B. THE INSURANCE REQUIRED HEREUNDER SHALL BE PRIMARY AND ANY INSURANCE OR SELF-INSURANCE MAINTAINED BY THE OWNER SHALL BE EXCESS OF THE CONTRACTOR'S INSURANCE AND SHALL NOT CONTRIBUTE THEREWITH.
 - C. FAILURE OF THE CONTRACTOR TO COMPLY WITH ANY REPORTING PROVISIONS OF THE INSURANCE POLICIES REQUIRED HEREUNDER SHALL NOT AFFECT COVERAGE PROVIDED TO THE OWNER.
 - D. ALL RIGHTS OF SUBROGATION AGAINST THE OWNER SHALL BE WAIVED.
 - E. THE CONTRACTOR SHALL PROVIDE THE OWNER WITH CERTIFICATES OF INSURANCE WITH APPLICABLE ENDORSEMENTS AFFECTING COVERAGE, SIGNED BY A PERSON AUTHORIZED BY THE INSURANCE COMPANY TO BIND COVERAGE ON ITS BEHALF. ALL REQUIRED CERTIFICATES OF INSURANCE SHALL BE RECEIVED BY THE OWNER PRIOR TO COMMENCEMENT OF ANY WORK UNDER THIS CONTRACT.
 - F. ALL COVERAGE FOR SUBCONTRACTORS OF THE CONTRACTOR, IF ANY, SHALL BE SUBJECT TO ALL OF THE REQUIREMENTS STATED HEREIN.
- 9.08 ALL INSURANCE SHALL BE WRITTEN BY INSURANCE COMPANIES LICENSED TO DO BUSINESS IN THE COMMONWEALTH OF VIRGINIA.
- 9.09 ALL CERTIFICATES OF INSURANCE SHALL NAME THE CITY OF LYNCHBURG, THE OFFICERS AND EMPLOYEES OF THE CITY OF LYNCHBURG, WILEY & WILSON, INC., AND THE OFFICERS AND EMPLOYEES OF WILEY & WILSON, INC. AS ADDITIONAL INSURED.

10. CONTRACTOR'S RESPONSIBILITIES

10.01 LABOR, MATERIALS, AND EQUIPMENT: ADD THE FOLLOWING TO PARAGRAPH 6.05:

"ALL MATERIALS INCORPORATED IN THE WORK OF THIS CONTRACT SHALL BE FREE OF ASBESTOS AND OTHER HAZARDOUS MATERIALS."

10.02 SUBCONTRACT WORK: ADD THE FOLLOWING TO PARAGRAPH 6.06.B:

"6.06.B EXCEPT AS OTHERWISE NOTED HEREIN, CONTRACT WORK AMOUNTING TO NOT LESS THAN 80 PERCENT OF THE TOTAL PROJECT OR CONTRACT SHALL BE PERFORMED WITH THE CONTRACTOR'S OWN ORGANIZATION. 'SPECIALTY ITEMS' SO DESIGNATED BY THE CITY ENGINEER MAY BE PERFORMED BY SUBCONTRACT AND THE COST OF ANY 'SPECIALTY ITEMS' SO PERFORMED MAY BE DEDUCTED FROM THE TOTAL PROJECT OR CONTRACT COST BEFORE COMPUTING THE AMOUNT OF WORK REQUIRED TO BE PERFORMED BY THE CONTRACTOR'S OWN ORGANIZATION. 'SPECIALTY ITEMS' FOR THIS PROJECT SHALL CONSIST OF CONCRETE WORK, LANDSCAPING, SEEDING, BORING AND SEWER LINING WORK."

10.03 A BLASTING PERMIT ISSUED BY THE CITY FIRE MARSHAL WILL BE REQUIRED FOR BLASTING, THIS PERMIT MAY REQUIRE ADDITIONAL INSURANCE COVERAGE.

10.04 A BUSINESS LICENSE WILL BE REQUIRED AND WILL BE \$0.16 PER \$100 ON GROSS FEE AND SHALL BE OBTAINED FROM THE COMMISSIONER OF REVENUE.

10.05 TAXES: ADD THE FOLLOWING TO PARAGRAPH 6.10:

"B. PORTIONS OF THIS PROJECT HAVE BEEN APPROVED AS A POLLUTION CONTROL FACILITY AND CERTIFIED TO THE VIRGINIA DEPARTMENT OF TAXATION FOR EXEMPTION FROM SALES AND USE TAXES ACCORDING TO THE CODE OF VIRGINIA 58.1-3660. THE CONTRACTOR SHALL REQUEST THE APPLICABLE SALES AND USE TAX EXEMPTION CERTIFICATE FROM THE VIRGINIA DEPARTMENT OF TAXATION THROUGH THE SOUTH CENTRAL REGIONAL OFFICE OF THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY LOCATED IN LYNCHBURG, VIRGINIA. ONLY THE STORM AND SANITARY SEWER LINES AND APPURTENANCES ARE EXEMPT FROM SALES AND USE TAXES."

10.06 INDEMNIFICATION: IN PARAGRAPH 6.20, CHANGE THE WORD "ENGINEER" TO "OWNER" IN TWO LOCATIONS.

10.07 THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL SAFETY AT THE JOB SITE AND SHALL COMPLY WITH ALL OSHA REGULATIONS.

11. DELETE PARAGRAPH 8.06 IN ITS ENTIRETY.

12. ADD THE FOLLOWING TO ARTICLE 9, PARAGRAPH 9.03:

"B. INSPECTORS EMPLOYED BY THE CITY OR WILEY & WILSON WILL BE AUTHORIZED TO INSPECT ALL WORK DONE AND ALL MATERIALS FURNISHED. SUCH INSPECTION MAY EXTEND TO ALL OR ANY PART OF THE WORK AND TO THE PREPARATION, FABRICATION, OR MANUFACTURE OF THE MATERIALS USED. THE INSPECTOR WILL NOT BE AUTHORIZED TO REVOKE, ALTER, OR WAIVE ANY REQUIREMENTS OF THESE SPECIFICATIONS; HOWEVER, HE WILL HAVE AUTHORITY TO REJECT MATERIALS OR SUSPEND THE WORK UNTIL ANY QUESTIONS OR ISSUES CONCERNING MATERIALS CAN BE REFERRED TO AND DECIDED BY THE ENGINEER. THE PRESENCE OR ABSENCE OF AN INSPECTOR SHALL NOT LESSEN THE RESPONSIBILITY OF THE CONTRACTOR TO PROPERLY PERFORM THE WORK."

13. ADD THE FOLLOWING TO ARTICLE 12.02:

"12.02.C.TIME EXTENSIONS FOR ABNORMAL WEATHER:

12.02.C.1 THIS PROVISION SPECIFIES THE PROCEDURE FOR THE DETERMINATION OF TIME EXTENSIONS FOR ABNORMAL WEATHER IN ACCORDANCE WITH THE CONTRACT GENERAL CONDITION 12.4.

THIS LISTING BELOW DEFINES THE MONTHLY ANTICIPATED WORKING DAYS OF ADVERSE WEATHER FOR EACH MONTH AND IS BASED UPON NOAA CLIMATOLOGICAL DATA FOR LYNCHBURG, VIRGINIA.

JAN	FEB	MAR	APR	MAY	JUNE	JUL	AUG	SEP	OCT	NOV	DEC
8	7	8	7	8	7	8	7	6	6	6	7

12.02.C.2 THE ANTICIPATED DAYS PROVIDED ABOVE WILL CONSTITUTE THE BASE LINE FOR MONTHLY WEATHER TIME EVALUATIONS. THROUGHOUT THE CONTRACT, ACTUAL WEATHER WORKING DAYS ARE TO BE RECORDED AND COMPARED TO THE MONTHLY ANTICIPATED WORKING DAYS.

12.02.C.3 ONCE THE NUMBER OF ACTUAL ADVERSE WEATHER WORKING DAYS EXCEEDS THE ANTICIPATED WORKING DAYS, ANY SUBSEQUENT DAYS MAY BE USED AS A BASIS TO DETERMINE WHETHER A CONTRACTOR IS ENTITLED TO A TIME EXTENSION. THE ADVERSE WEATHER MUST HAVE PREVENTED WORK FOR 50 PERCENT OR MORE OF THE CONTRACTOR'S WORK DAY AND DELAYED WORK CRITICAL TO THE TIMELY COMPLETION OF THE PROJECT.

12.02.C.4 THE CONTRACTOR'S SCHEDULE MUST INDICATE THE CRITICAL (PATH) WORK AND MUST REFLECT THE ABOVE ANTICIPATED ADVERSE WEATHER DAYS ON ALL WEATHER DEPENDENT ACTIVITIES.

12.02.C.5 AT THE END OF EACH QUARTER OF THE CALENDAR YEAR, THE ANTICIPATED DAYS SCHEDULED WILL BE BALANCED WITH THE ACTUAL ADVERSE WEATHER DAYS."

14. REPLACE PARAGRAPH 14.02.C WITH THE FOLLOWING:

"14.02.C. - PAYMENTS

14.02.C.1 THE OWNER WILL MAKE PARTIAL PAYMENTS TO THE CONTRACTOR ON THE LAST BUSINESS DAY OF THE MONTH BY CHECK VIA FIRST CLASS MAIL THROUGH THE U. S. POSTAL SERVICE FOR A DULY CERTIFIED AND APPROVED ESTIMATE OF WORK PERFORMED DURING THE PRECEDING CALENDAR MONTH (SUBJECT TO THE PROVISIONS OF THE LAST SENTENCE OF PARAGRAPH 14.7) AND THE AGREEMENT.

14.02.C.2 THE CONTRACTOR SHALL TAKE ONE OF THE TWO FOLLOWING ACTIONS WITHIN SEVEN DAYS AFTER RECEIPT OF PAYMENT FROM THE OWNER WITH REGARDS TO WORK PERFORMED BY A SUBCONTRACTOR AND/OR SUPPLIER UNDER THEIR CONTRACT:

A. PAY THE SUBCONTRACTOR AND/OR SUPPLIER FOR THE PROPORTIONATE SHARE OF THE TOTAL PAYMENT RECEIVED FROM THE OWNER ATTRIBUTABLE TO THE WORK PERFORMED BY THE SUBCONTRACTOR AND/OR SUPPLIER UNDER THAT CONTRACT; OR

B. NOTIFY THE OWNER AND SUBCONTRACTOR AND/OR SUPPLIER, IN WRITING, OF HIS INTENTION TO WITHHOLD ALL OR PART OF THE SUBCONTRACTOR'S AND/OR SUPPLIER'S PAYMENT WITH THE REASON FOR NONPAYMENT.

14.02.C.3 THE CONTRACTOR WILL PAY INTEREST TO THE SUBCONTRACTOR AND/OR SUPPLIER ON ALL AMOUNTS OWED BY THE CONTRACTOR THAT REMAIN UNPAID AFTER SEVEN DAYS FOLLOWING RECEIPT BY THE CONTRACTOR OF PAYMENT FROM THE OWNER FOR WORK PERFORMED BY THE SUBCONTRACTOR AND/OR SUPPLIER UNDER THIS CONTRACT, EXCEPT FOR AMOUNTS WITHHELD AS ALLOWED ABOVE. INTEREST SHALL ACCRUE AT THE RATE OF ONE PERCENT PER MONTH.

14.02.C.4 THE CONTRACTOR SHALL INCLUDE IN EACH OF ITS SUBCONTRACTS A PROVISION REQUIRING EACH SUBCONTRACTOR AND/OR SUPPLIER TO INCLUDE OR OTHERWISE BE SUBJECT TO THE SAME PAYMENT AND INTEREST REQUIREMENTS WITH RESPECT TO EACH LOWER-TIER SUBCONTRACTOR AND/OR SUPPLIER. A CONTRACTOR'S OBLIGATION TO PAY AN INTEREST CHARGE TO A SUBCONTRACTOR AND/OR SUPPLIER PURSUANT TO THE PAYMENT CLAUSE IN THIS SECTION MAY NOT BE CONSTRUED TO BE AN OBLIGATION OF THE OWNER'S. A CONTRACT MODIFICATION MAY NOT BE MADE FOR THE PURPOSE OF PROVIDING REIMBURSEMENT FOR SUCH INTEREST CHARGE. A COST REIMBURSEMENT CLAIM MAY NOT INCLUDE ANY AMOUNT FOR REIMBURSEMENT FOR SUCH INTEREST CHARGE."

15. DELETE ARTICLE 16 - DISPUTE RESOLUTION IN ITS ENTIRETY AND REPLACE WITH THE FOLLOWING:

"16.01 CONTRACTURAL CLAIMS, WHETHER FOR MONEY OR OTHER RELIEF, SHALL BE SUBMITTED IN WRITING TO THE CITY MANAGER WITH COPY TO PURCHASING AGENT, NO LATER THAN 60 DAYS AFTER FINAL PAYMENT; HOWEVER, WRITTEN NOTICE OF THE CONTRACTOR'S INTENTION TO FILE SUCH CLAIM SHALL HAVE BEEN GIVEN WITHIN 10 DAYS OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM OR THE BEGINNING OF THE WORK UPON WHICH THE CLAIM IS BASED. NOTHING HEREIN SHALL PRECLUDE A CONTRACT FROM REQUIRING SUBMISSION OF AN INVOICE FOR FINAL PAYMENT WITHIN A CERTAIN TIME AFTER COMPLETION AND ACCEPTANCE OF THE WORK OR ACCEPTANCE OF THE GOODS. PENDANCY OF CLAIMS SHALL NOT DELAY PAYMENT OF AMOUNTS AGREED DUE IN THE FINAL PAYMENT. THE DECISION OF THE CITY MANAGER ON THE CLAIM SHALL BE FINAL UNLESS APPEALED TO THE LYNCHBURG CIRCUIT COURT AS PROVIDED BY LAW."

16. DELETE PARAGRAPH 17.05 A. IN ITS ENTIRETY AND REPLACE WITH THE FOLLOWING:

"A. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA AND THE LYNCHBURG PUBLIC PROCUREMENT ORDINANCE. THE SUCCESSFUL CONTRACTOR SUBMITS ITSELF TO THE JURISDICTION OF A COURT OF COMPETENT JURISDICTION IN THE CITY OF LYNCHBURG COURTS SHALL BE THE APPROPRIATE FORUM.

END OF SUPPLEMENTARY CONDITIONS

VRLF CONTRACT INSERTS

The following document is to be inserted "verbatim" in all construction contracts. The contract insert contains 8 subparts and 2 attachments as follows:

1. Subpart A - containing the Federal/State Nondiscrimination Provisions for Equal Employment Opportunities applicable to all construction and service contracts.
2. Subpart B - containing the notice to the prime contractor relative to certification on nonsegregational facilities.
3. Subpart C - setting forth the affirmative action requirements for the contractors and subcontractors for work involving any construction trade in excess of \$10,000.
4. Subpart D - containing the Civil Rights Act of 1964.
5. Subpart E - setting forth requirements of Age Discrimination of 1975, Rehabilitation Act of 1973, and Section 13 of PL 92-500, the Federal Water Pollution Control Act.
6. Subpart F - setting forth requirements under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act for contracts and subcontracts in excess of \$100,000.
7. Subpart G - Procurement of goods and materials from Small Businesses in Rural Areas of the Commonwealth of Virginia wherever practical and feasible.
8. Subpart H - Provides that a contractor maintains a drug-free workplace or subcontractor during the performance of contract duties for any wastewater revolving loan-assisted project.

Attachment No. 1 - Certification regarding EEO compliance

Attachment No. 2 - MBE/WBE Utilization Report

SUBPART A

EQUAL EMPLOYMENT OPPORTUNITY

1. Executive Order 11246 (Contracts/subcontracts above \$10,000)

(a) During the performance of this contract, the contractor and all subcontractors agree as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or the other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractors' noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SUBPART B

NOTICE TO PRIME CONTRACTOR OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de factor basis. The certification also provides that he will not maintain such segregated facilities.

SUBPART C

CONSTRUCTION CONTRACTORS AFFIRMATIVE ACTION REQUIREMENTS

1. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the affirmative action goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
2. The applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals and dollar objectives are established as follows:

	<u>MBE%</u>	<u>WBE%</u>
Construction	2.6	1.5
Equipment	0.3	1.7
Services	1.9	0.8
Supplies	0.8	0.6

3. The MBE/WBE goals set forth in this contract are shown in #2 above. The Contractor shall make every reasonable attempt to achieve the goals as stated. When so notified by the owner, the apparent low bidder shall provide a listing of MBE's and WBE's he proposes to use on this project. Should the bidder fail to meet the aforementioned objectives he shall provide complete documentation which demonstrates the positive efforts made. Failure to satisfy this requirement to the satisfaction of the owner shall constitute a nonresponsible bid and shall be cause for the owner to reject the bid.
4. The contractor shall implement the specific affirmative action steps as provided in Section B included in the Instruction to Bidders/Offerers section of these specifications.
5. The Contractor and all Subcontractors must maintain documentation and records of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. Within 21 days of determination of the apparent low bidder, the contractor must furnish to the loan recipient all pertinent documentation, which evidences or documents a good faith effort in MBE/WBE solicitation and projected utilization. Failure to comply with the submission of appropriate MBE/WBE documentation may result in the determination of a bidder as nonresponsible and shall cause for the bid to be rejected.
6. Immediately following the award of contracts and continuing through the construction stage, all records of MBE/WBE utilization shall be maintained and reported in accordance with the Virginia Revolving Loan Fund MBE/WBE Utilization Reporting Form. A MBE/WBE Utilization Reporting Form shall be completed and submitted to the loan recipient on a calendar year quarterly basis during the construction period.

SUBPART D

CIVIL RIGHTS ACT OF 1964

The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.

SUBPART E

SECTION 13 of PL 92-500; UNDER THE FEDERAL WATER POLLUTION CONTROL ACT; REHABILITATION ACT OF 1973; PL 93-112, AND AGE DISCRIMINATION ACT OF 1975

The Contractor and any subcontractors shall not on the grounds of race, color, national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination any person under any program or activity funded in whole or in part with Federal funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

SUBPART F

COMPLIANCE WITH SECTION 306 OF THE CLEAN AIR ACT AND SECTION 508 OF THE CLEAN WATER ACT

(CONTRACTS AND SUBCONTRACTS IN EXCESS OF \$100,000)

The Contractor agrees that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
2. The Contractor and Subcontractors will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued thereunder.
3. The Contractor will promptly notify the loan recipient and Department of Environmental Quality of any notification received from the Director of the Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

SUBPART G

UTILIZATION OF SMALL BUSINESSES IN RURAL AREAS

The contractor and its subcontractors shall maintain a small business solicitation list and make appropriate attempts to procure needed equipment, supplies and material from small businesses in rural areas of the Commonwealth of Virginia whenever they are a practical source for solicitation.

SUBPART H

TITLE 2.2, SECTION 2.2-4312, to CHAPTER 43 RELATING TO THE PROCUREMENT PRACTICES OF ALL PUBLIC BODIES

For every contract over \$10,000 the contractor must maintain a drug-free workplace. During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Instruction to Bidders/Offerers

Minority Business and Women's Business Enterprise (MBE/WBE) Requirements of 40 CFR 33.240

Bidder/Offerer Responsibilities

A. Affirmative Steps: Activities during preparation of bids and offers. Bidders/offerers shall take affirmative steps in compliance with the regulations, prior to submission of bids or closing data for receipt of initial offers, to encourage participation in projects by MBE and WBE firms. Such efforts include:

1. Establish and maintain a current solicitation list of minority and female recruitment sources, and assure MBE and WBE firms are solicited once they are identified.
2. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation and establish delivery schedules to encourage MBE/WBE participation.
3. Assuring that MBE and WBE firms are solicited whenever they are potential sources of goods and services. This step may include:

a. Sending letters or making other personal contact with MBE and WBE firms, private agencies and state associations (e.g., whose names appear on lists prepared by EPA or the recipient and other MBE/WBE known to the bidder/offerer). MBE and WBE firms should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

(i) Specific description of the work to be contracted;

(ii) How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;

(iii) Date the quotation is due to the bidder/offerer;

(iv) Name, address, and phone number of the person in the bidder/offerer's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

b. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprises of the U.S. Department of Commerce.

- B. Bidders/offerers must demonstrate compliance with MBE/WBE requirements to be deemed responsible. Demonstration of compliance may include the following information; however, the recipient may specify other methods of demonstrating compliance:

1. Names, addresses and phone numbers of MBE/WBE firms expected to perform work;

2. Work to be performed by the MBE and WBE firms;

3. Aggregate dollar amount of work to be performed by MBE and WBE firms, showing aggregate to MBE's and aggregate to WBE's separately;

4. Description of contacts to MBE and WBE organizations, agencies and associations which service MBE/WBE firms, including names of organizations, agencies and associations and dates of contacts;
 5. Descriptions of contacts to MBE and WBE firms, including number of contacts, fields (i.e., equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.
- C. Successful bidders/offers should take reasonable affirmative steps to subcontract with MBE and WBE firms whenever additional subcontracting opportunities arise during the performance of the contract.

**BIDDER COMPLIANCE STATEMENT/CERTIFICATION
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

Applicability: Bid exceeding ten thousand dollars for construction contract/subcontract of unlimited amount and non-construction contract/subcontract of less than one million dollars.

This statement relates to a proposed (contract between _____ and Public Body) or
(contractor)

(subcontract between _____ and _____) to be
(subcontractor) (contractor)

funded under a federally assisted project. Pursuant to Executive Order 11246 and its implementing regulations at 41 CFR 60-1.7(b)(1), as the undersigned bidder, I certify that:

- 1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
_____ Yes _____ No
- 2) Bidder has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR 60-2 (applies only to non-construction contractor).
_____ Yes _____ No
- 3) Bidder has filed with the Joint Reporting Committee, the Director (Office of Federal Contract Compliance Programs, U.S. Department of Labor), and agency, or the Equal Employment Opportunity Commission, all reports due under the applicable filing requirements.
_____ Yes _____ No

I understand that if I have failed to file any compliance reports which have been required of me, or have failed to develop and have on file at each establishment affirmative action programs pursuant to 41 CFR 60-2, when required, I am not eligible to have my bid or proposal considered, or to enter into the proposed contract.

I further understand that if awarded the proposed contract, and the contract for the FIRST time brings me under the filing requirements or the written affirmative action programs that I will, as applicable: (a) within 30 days file with the Public Body Standard Form 100 (EEO-1); and (b) within 120 days from the commencement of the contract develop and submit to the Director of OFCCP for approval a Written Affirmative Action Plan.

NAME AND ADDRESS OF BIDDER (Include ZIP Code):

NAME AND TITLE OF SIGNER (Please Type):

SIGNATURE:

DATE:

VIRGINIA REVOLVING LOAN FUND**PART I - MBE/WBE UTILIZATION REPORTING**

Send completed form to: Department of Environmental Quality, Construction Assistance Program, P.O. Box 10009, Richmond, Virginia 23240.
Reporting contact is Kathy Maybee; phone number is (804) 698-4139.

Year 19__

Reporting Quarter: (check one)

1st (Oct.-Dec.) _____

2nd (Jan.-Mar.) _____

3rd (Apr.-Jun.) _____

4th (Jul.-Sept.) _____

Name of Loan Recipient: _____

Loan Recipient Project No.: _____

Prime Contractor: _____

Contract Number: _____

Date for Start of Construction: _____

Is the Prime Contractor an MBE or WBE? Yes _____ No _____

Have you subcontracted with an MBE or WBE firm in this quarter?

Yes _____ No _____

If yes, provide information on Part II and sign and date below.

If no, please sign and date below.

Contractor or Recipient (if prime contractor is MBE\WBE)_____
Date

If an MBE/WBE subcontract is rescinded, please give name of firm, date of rescission and amount of rescission.

Project No. _____ Year _____ Quarter _____

¹ Type of product or use service code below:

- 10=Other

FEDERAL REQUIREMENTS AND CONTRACT PROVISIONS FOR THE
APPROPRIATION ACT PROJECTS
ENVIRONMENTAL PROTECTION AGENCY
Region III

The project or segment thereof to be constructed in accordance with these contract documents is subject to the following Federal requirements. In the event of conflict with other requirements of the contract documents, the following Federal requirements control unless the Federal requirement is a minimum requirement. Nothing in this document shall be construed to prohibit the owner from requiring additional assurances, guarantees, indemnities, or other contractual requirements from any other party to this agreement.

This Federal insert has been provided by the Owner to the Contractor for two reasons. Section I, IV, and V are required provisions of the construction contract and are hereby incorporated in that contract. The remaining sections have been provided as an aid in complying with Federal requirements, and highlight particular sections of the regulations and regional requirements with which the bidders should be familiar.

THE BIDDERS SHOULD BE PARTICULARLY AWARE OF THE FOLLOWING
CRITICAL REQUIREMENTS CONTAINED HEREIN:

1. THE AFFIRMATIVE ACTION PROGRAM REQUIREMENTS AND GOALS.
2. THE MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM REQUIREMENTS.
3. THE MBE DOCUMENTATION REQUIREMENTS.
4. THE CERTIFICATION OF NONSEGREGATED FACILITIES.

Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is or will be a party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in 40 CFR PART 31.

OCT 1997 (re-formatted March 2003)

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I MODEL SUBAGREEMENT CLAUSES APPROPRIATION ACT PROJECTS

§31.36 Model subagreement clauses.

(a) Recipients must include, when appropriate, the following thirteen clauses or their equivalent in each subagreement.

(b) Recipients may substitute other terms for "recipient" and "contractor" in their subagreements.

1. Supersession

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 31.36 or their equivalent apply to the EPA funded work to be performed under this subagreement and that these clauses supersede any conflicting provisions in this subagreement.

2. Privity of Subagreement

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this subagreement or any lower tier subagreement. This subagreement is to be subject to regulations contained in 40 CFR Part 31 in effect on the date of the assistance award for this project.

3. Changes

a) This clause in paragraph (a) applies only to subagreements for construction.

(1) The recipient may, at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the subagreement, including but not limited to changes:

- (i) In the specifications (including drawings and designs);
- (ii) In the time, method, or manner of performance of the work;
- (iii) In the recipient-furnished facilities, equipment, materials, services, or site; or
- (iv) Directing acceleration in the performance of work.

(2) A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the recipient which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement, or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in this contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the subagreement modified in writing and, except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with those defective specifications.

(5) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph (1) of this change clause or the furnishing of a written notice under paragraph (2) of this clause, submit to the recipient a written statement setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day

period. The statement of claim may be included in the notice under paragraph (2) of this change clause.

(6) No claim by the Contractor for an equitable adjustment shall be allowed if made after final payment under this subagreement.

(b) The clause in this paragraph applies to subagreements for services.

(1) The recipient may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change unless the recipient grants additional time before the date of final payment.

(2) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the recipient.

(c) This clause in paragraph (c) applies only to subagreements for supplies.

(1) The recipient may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this subagreement, in any one or more of the following:

- (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the recipient;
- (ii) Method of shipment or packing; and
- (iii) Place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, an equitable adjustment shall be made in the subagreement price or delivery schedule, or both, and the subagreement shall be modified in writing. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the contractor of the notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. Differing Site Conditions

(This clause is applicable only to construction subagreements.)

(a) The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

(1) subsurface or latent physical conditions at the site differing materially from those indicated in this subagreement, or

(2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this subagreement. The recipient shall promptly investigate the conditions, and if it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this sub agreement, whether or not changed as a result of such conditions, an equitable adjustable shall be made and the subagreement modified in writing.

(b) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

(c) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

5. Suspension of Work

(This clause is applicable only to construction subagreements.)

(a) The recipient may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act or failure to act involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the subagreement.

6. Termination

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor

is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the price provided for in this subagreement shall be made as provided in paragraph (c) of this clause.

7. Remedies

Except as may be otherwise provided in this subagreement, all claims, counter-claims, disputes, and other matters in question between the recipient and the contractor arising out of or relating to this subagreement or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. Price Reduction for Defective Cost or Pricing Data

Note.--This clause is applicable to (1) any subagreement negotiated between the recipient and its contractor in excess of \$100,000; (2) negotiated subagreement amendments or change orders in excess of \$100,000 affecting the price of a formally advertised, competitively awarded, fixed price subagreement; or (3) any lower tier subagreement or purchase order in excess of \$100,000 under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause is not applicable for subagreements to the extent that they are awarded on the basis of effective price competition.

(a) The contractor and subcontractor, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements, and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement; any lower tier subagreement, or any amendment thereunder was increased by any significant sums because

the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly: and the subagreement shall be modified in writing to reflect such action.

(b) Failure to agree on a reduction shall be subject to the remedies clause of this agreement.

Note.--Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the contractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification or defective cost or pricing data required to be submitted by lower tier contractors.

9. Audit; Access to Records

(a) The contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on EPA funded work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 31, in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required under 40 CFR 31.36(f) for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, recipient, and [State] or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to include paragraphs (a) through (g) of this clause in all his subagreements in excess of \$10,000 and all lower tier subagreements in excess of \$10,000 and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance by EPA assisted work under this subagreement and for the time periods specified in 40 CFR Part 31. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR Part 31.

(f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraphs (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all subagreements (except formally advertised, competitively awarded, fixed price subagreements) and all subagreement change

orders regardless of the type of subagreement, and all subagreement amendments regardless of the type of subagreement. In addition this right of access applies to all records pertaining to all subagreements, subagreement change orders, and subagreement amendments:

(1) To the extent the records pertain directly to subagreement performance;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(3) If the subagreement is terminated for default or for convenience.

10. Covenant Against Contingent Fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage brokerage, or contingent fee.

11. Gratuities

(a) If the recipient finds after a notice and hearing that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the recipient, the State, or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this agreement, the recipient may, by written notice to the contractor, terminate this agreement. The recipient may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this agreement.

(b) In the event this subagreement is terminated as provided in paragraph (a) the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. Responsibility of the Contractor

(b) The following clause applies only to subagreements for construction.

(1) The contractor agrees to perform all work under this subagreement in accordance with this agreement's designs, drawings and specifications.

(2) The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect

through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

13. Final Payment

Upon satisfactory completion of the work performed under this agreement, as a condition before final payment under this agreement, or as a termination settlement under this agreement, the contractor shall execute and deliver to the owner a release of all claims against the owner arising under or by virtue of this agreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this agreement or by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this agreement or applicable performance and payment bonds.

II NONDISCRIMINATION IN EMPLOYMENT EQUAL OPPORTUNITY CLAUSE (41 CFR 60-1.4)

Federally assisted construction contracts.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows.

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by

Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders,

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the administering agency or the Secretary of Labor pursuant to Part 11, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

III CERTIFICATION OF NONSEGREGATED FACILITIES (41 CFR 60-1.8)

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that he will not maintain such segregated facilities.

IV AFFIRMATIVE ACTION REQUIREMENTS STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted:
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups no of Hispanic origin):
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or subcontractor at any tier, subcontract a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an associations, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participation in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participation in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative actions steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and

- telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations: by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a

substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

V AFFIRMATIVE ACTION PROGRAM

The following is from 41 CFR Part 60-4, published October 3, 1980).

The minority and female goals apply to Federal and federally assisted construction contractors and subcontractors which have covered contracts. The goals are expressed as a percentage of the total hours worked by such a covered's or subcontractor's entire onsite construction workforce which is working on any construction site within a relevant area. The goal applies to each construction craft and trade in the contractor's entire workforce in the relevant area including those employees working on private nonfederally involved projects.

Until further notice, the following goals for minority utilization in

each construction craft and trade shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographic area. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, federally assisted or nonfederally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply as follows:

Goal for female participation for each trade 6.9
Goal for minority participation for each trade (percent)

Economic Areas

Non-SMSA Counties	17.0
PA Pike	
PENNSYLVANIA:	
010 Buffalo, NY	
Non-SMSA Counties	6.3
PA McKean; PA Potter	
011 Binghamton, NY-PA	
SMSA Counties	
0960 Binghamton, NY-PA	1.1
NY Broome; NY Tioga; PA Susquehanna.	
Non-SMSA Counties	1.2
PA Bradford; PA Tioga.	
013 Scranton - Wilkes-Barre, PA	
SMSA Counties	
5745 Northeast Pennsylvania	0.6
PA Lackawanna; PA Luzerne; PA Monroe	
Non-SMSA Counties	0.5
PA Columbia; PA Wayne; PA Wyoming	
014 Williamsport, PA	
SMSA Counties	
9140 Williamsport, PA	1.0
PA Lycoming	
Non-SMSA Counties	0.7
PA Cameron; PA Centre; PA Clearfield; PA Clinton; PA Elk; PA Jefferson; PA Montour; PA Northumberland; PA Snyder; PA Sullivan; PA Union.	
015 Erie, PA	
SMSA Counties	
2360 Erie, PA	2.0
PA Erie	
Non-SMSA Counties	1.8
PA Clarion; PA Crawford; PA Forest; PA Venango; PA Warren.	
016 Pittsburgh, PA	
SMSA Counties	
0280 Altoona, PA	1.0
PA Blair.	
3680 Johnson, PA	1.3
PA Cambria; PA Somerset	
6280 Pittsburgh, PA	6.3
PA Allegheny; PA Beaver; PA Washington; PA Westmoreland	
Non-SMSA Counties	4.8
MD Allegany; MD Garrett; PA Armstrong; PA Bedford; PA Butler; PA Fayette; PA Greene; PA Indiana; WV Mineral	

017 Harrisburg - York - Lancaster, PA	
SMSA Counties	
3240 Harrisburg, PA	6.2
PA Cumberland; PA Dauphin; PA Parry	
4000 Lancaster, PA	2.0
PA Lancaster.	
9280 York, PA	2.2
PA Adams; PA York	
Non-SMSA Counties	3.1
PA Franklin; PA Fulton; PA Huntingdon; PA Juniata; PA Lebanon; PA Mifflin	
018 Philadelphia, PA	
SMSA Counties	
0240 Allentown - Bethlehem - Easton, PA-NJ	1.6
NJ Warren; PA Carbon; PA Lehigh; PA Northampton	
0560 Atlantic City, NJ	18.2
NJ Atlantic.	
6160 Philadelphia, PA-NJ	17.3
NJ Burlington; NJ Camden; NJ Gloucester; PA Bucks; PA Chester; PA Delaware; PA Montgomery; PA Philadelphia	
6680 Reading, PA	2.5
PA Berks	
8480 Trenton, NJ	16.4
NJ Mercer	
8760 Vineland - Millville, Bridgeton, NJ	16.0
NJ Cumberland	
9160 Wilmington, DE-NJ-MD	12.3
DE New Castle; MD Cecil; NJ Salem.	
Non-SMSA Counties	14.5
DE Kent; DE Sussex; NJ Cape May; PA Schuylkill.	
MARYLAND:	
019 Baltimore, MD	
SMSA Counties	
0720 Baltimore, MD	23.0
MD Anne Arundel; MD Baltimore; MD Carroll; MD Harford; MD Howard, MD Baltimore City.	
Non-SMSA Counties	23.6
MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worcester; VA Accomack, VA Northampton	
WASHINGTON, DC:	
020 Washington, DC	
SMSA Counties:	
8840 Washington, DC-MD-VA	28.0
DC District of Columbia; MD Charles; MD Montgomery; MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William; VA Alexandria; VA Fairfax City; VA Falls Church	
Non-SMSA Counties	25.2
MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spottsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester; WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
VIRGINIA:	
021 Roanoke-Lynchburg, VA	
SMSA Counties;	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg.	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City;	

VA Salem.	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista; VA Clifton Forge; VA Covington; VA Danville; VA Galex; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.	
022 Richmond, VA	
SMSA Counties	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA	24.9
VA Charles City; VA Chesterfield VA Goochland; VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties	27.9
VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham; VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; PA Prince Edward; VA Richmond; VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News, VA	
SMSA Counties	
5680 Newport News-Hampton, VA	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg	
5720 Norfolk - Virginia Beach - Portsmouth	
VA-NC	26.6
NC Currituck; VA Chesapeake, VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
Non-SMSA Counties	29.7
VA Isle of Wight; VA Matthes; VA Middlesex; VA Southampton, VA Surry; VA Franklin	
062 Johnson City - Kingsport - Bristol, TN-VA:	
SMSA Counties	
3660 Johnson City - Kingsport - Bristol, TN-VA	2.6
TN Carter; TN Hawkins; TN Sullivan; TN Unicot; TN Washington; VA Scott; VA Washington; VA Bristol.	
Non-SMSA Counties	3.2 TN
Greene; TN Hancock; TN Johnson; VA Buchanan; VA Dickens; VA Lee; VA Russell; VA Smyth; CA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	
Ohio:	
064 Youngstown-Warren, OH:	
SMSA Counties:	
9320 Youngstown-Warren, OH	9.4
OH Columbiana; PA Lawrence; PA Mercer;	

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the

contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to:

Assistant Regional Administrator
Office of Federal Contract Compliance
3535 Market Street
Philadelphia, Pennsylvania 19104

within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, (if any).

VI REQUIRED PROVISIONS OF 40 CFR PART 31 SUBPART C

The contractor agrees that "construction" work (as defined by the Secretary of Labor) shall be subject to the following provisions to the extent applicable:

A. All contracts regardless of dollar value.

1. Patents, Data, and Copyright Clause

The contractor agrees to comply with the Environmental Protection Agency's (EPA) requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arise or is developed in the course of or under the agreement and with EPA requirements and regulations pertaining to copyrights and rights contained in 40 CFR Part 31.

B. Contracts awarded in excess of \$10,000

Equal Employment Opportunity Clause

The contractor agrees to comply with Executive Order 11246, entitled Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Dept. of Labor regulations (41 CFR Part 60).

C. Contracts awarded in excess of \$100,000

Violating Facilities Clause

The contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the award of this contract to facilities included on the EPA List of Violating Facilities. The contractor shall report violations to EPA.

VII Attachments

ATTACHMENT 1

EXTRACTS FROM THE FEDERAL REGISTER

(The following is taken from Titles 40 and 41 of the Federal Register)

Title 41 Part 60 - Office of Federal Contract Compliance Programs
Equal Employment
Opportunity, Department of Labor

Part 60-1 -- Obligations of Contractors and Subcontractors

- 60-1.7 Reports and other required information.
- 60-1.8(b) Segregated facilities.
- 60-1.20(d) Compliance reviews.
- 60-1.41 Solicitation or advertisements for employees.
- 60-1.42 Notices to be posted.
- 60-1.43 Access to records and site of employment

Title 40 Part 31 - Uniform Administration Requirements for Grants and Cooperative Agreements to
State and Local Governments

Subpart C - Post-Award Requirements

- 31.34 Copyrights.
- 31.35 Subawards to debarred and suspended parties.
- 31.36(b) Procurement standards.
- 31.36(c) Competition.
- 31.36(e) Small and minority firms, women's business enterprise and labor surplus area firms.
- 31.36(h) Bonding requirements.

Note: Part 31 contains references to the Davis-Bacon Act and the "Buy American" requirements of the Clean Water Act. NOTWITHSTANDING THESE REFERENCES, THE APPROPRIATION ACT PROJECTS ARE NOT SUBJECT TO THESE REQUIREMENTS.

Authority: 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 1401 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 9601 *et seq.*; and Executive Order 11246.

Part 60-1 -- Obligations of Contractors and Subcontractors

§60-1.7 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each prime contractor and subcontractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with §60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first-tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes:

Provided, That any subcontractor below the first-tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1)(i), (ii), and (iv) of this section.

(2) Each person required by §60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with §60-1.7(a)(1), or at such other intervals as the Director may require. The Director may extend the time for filing any report.

(3) The Director or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Director, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part.

(b) *Requirements for bidders or*

prospective contractors--(1) Certification of compliance with Part 60-2: Affirmative Action Programs. Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract:

(i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Director of the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

§60-1.8 Segregated facilities.

(b) *Certification by prime contractors or subcontractors.* Prior to the award of any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, each agency or applicant shall require the prospective prime contractor and each prime contractor and subcontractor shall require each subcontractor to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location under his control, where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director prior to the award of any nonexempt subcontract.

§60-1.20 Compliance reviews.

(d) Each agency shall include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each

negotiated contract, that if the award, when let, should exceed the amount of \$1 million or more, the prospective contractor and his known first-tier subcontractors with subcontracts of \$1 million or more will be subject to a compliance review before the award of the contract. No such contract shall be awarded unless a preaward compliance review of the prospective contractor and his known first tier \$1 million subcontractors has been conducted within 12 months prior to the award. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. OFCCP will provide awarding agencies with written reports of compliance within 30 days following the request. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found to be in compliance pursuant to paragraph (b) of this section, and with Part 60-2 of these regulations.

§60-1.41 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§60-1.42 Notices to be posted.

(a) Unless alternative notices are prescribed by the Director, the notices which prime contractors and subcontractors are required to post by paragraphs (1) and (3) of the equal opportunity clause will contain the following language and will be

provided by the contracting or administering agencies:

EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW -- DISCRIMINATION IS PROHIBITED BY THE CIVIL RIGHTS ACT OF 1964 AND BY EXECUTIVE ORDER 11246

Title VII of the Civil Rights Act of 1964 --
Administered by :

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 75 or more employees, by Labor Organizations with a hiring hall of 75 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship and Training. After July 1, 1967, employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968, those with 25 or more will be covered.

ANY PERSON

Who believes he or she has been discriminated against

Should Contact

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

2401 E Street NW, Washington, D.C.
20506

Executive Order No. 11246 --
Administrative by:

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

ANY PERSON

Who believes he or she has been discriminated against

Should Contact

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

U.S. Department of Labor Washington,
D.C. 20210

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing his employees with which he has a collective-bargaining agreement or other contract or understanding.

§60-1.43 Access to records and site of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying such books, records, accounts, and other material as may be relevant to the matter under investigation and pertinent to compliance with the order, and the rules and regulations promulgated pursuant thereto by the agency, or the Director. Information obtained in this manner shall be used only in connection with the administration of the order, the administration of the Civil Rights Act of 1964 (as amended) and in furtherance of the purposes of the order and that Act. (See 41 CFR Part 60-60, Contractor Evaluation Procedures for Nonconstruction Contractors; 41 CFR Part 60-40, Examination and Copying of OFCCP Documents.)

Subpart C -- Post-Award Requirements

§31.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§31.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§31.36 Procurement.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurement conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed

procurement to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern.

Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §31.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection

procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5)(i)-(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of

the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, and women's business enterprises, and labor surplus area firms are used when possible

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or

subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid "guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

ATTACHMENT 2

Copies of the following notice will be posted in conspicuous places available to employees or applicants for employment:

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS
NONDISCRIMINATION IN EMPLOYMENT

TO: _____
(Name or union or organization or workers)

The undersigned currently holds contract(s) with (Name of Applicant) involving funds or credit of the U. S. Government or (a) subcontractor(s) with a prime contractor holding such contract(s).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance the Executive Order No. 11246, Section 202, dated September 24, 1965, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

HIRING, PLACEMENT, UPGRADING, TRANSFER OR DEMOTION,
RECRUITMENT, ADVERTISING, OR SOLICITATION FOR
EMPLOYMENT, TRAINING DURING EMPLOYMENT, RATES OF
PAY OR OTHER FORMS OF COMPENSATION, SELECTION FOR
TRAINING INCLUDING APPRENTICESHIP, LAYOFF, OR TERMINATION.

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order No. 11246.

(Contractor or Subcontractor)

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts, subcontracts, and agreements with Applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certificate, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation and entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files, and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

(Signature)

(Date)

(Name and Title of Signer - Please Type)

DRAWING INDEX

<u>SHEET</u>	<u>DESCRIPTION</u>	<u>STATION RANGE</u>
1	COVER SHEET	ALL AREAS
2	LINE J	1+00 TO 10+00
3	LINE A	10+00 TO 19+00
4	LINE B	19+00 TO 28+00
5	LINE C CULVERT	28+00 TO 33+00 33+00 TO 37+00
6	LINE SAN 1	37+00 TO 46+00
7	LINE SAN 1	46+00 TO 55+00
8	LINE SAN 2	55+00 TO 64+00
9	LINE SAN 3	64+00 TO 73+00
10	LINE SAN 4	73+00 TO 82+00
11	LINE D	82+00 TO 91+00
12	LINE D	91+00 TO 100+00
13	LINE D LINE E LINE F	100+00 TO 103+00 103+00 TO 106+50 106+50 TO 109+00
14	LINE G LINE H	109+00 TO 112+00 112+00 TO 118+00
15	LINE SAN 5	118+00 TO 127+00
16	LINE SAN 5 LINE SAN 6	127+00 TO 131+00 131+00 TO 136+00
17	LINE SAN 6	136+00 TO 145+00
18	LINE SAN 7 LINE SAN 8	145+00 TO 147+00 147+00 TO 154+00
19	LINE SAN 9	154+00 TO 163+00
20	LINE SAN 9 LINE SAN 10	163+00 TO 166+00 166+00 TO 172+00
21	LINE SAN 11	172+00 TO 181+00
22	LINE SAN 11	181+00 TO 190+00

23	LINE SAN 11	190+00 TO 193+00
	LINE SAN 12	193+00 TO 199+00
24	LINE SAN 13	199+00 TO 208+00
25	LINE SAN 13	208+00 TO 217+00
26	LINE SAN 14	217+00 TO 221+00
	LINE SAN 15	221+00 TO 226+00
27	STORM SEWER LAYOUT	ALL AREAS
28	SANITARY SEWER REHAB	ALL AREAS
29	WATER IMPROVEMENTS	ALL AREAS
30	CURB & GUTTER, SIDEWALK	ALL AREAS
31	STREET IMPROVEMENTS	ALL AREAS
32	LINE K	226+00 TO 235+00

END OF DRAWING INDEX